



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Hall and Thompson

BILL SUMMARY

Agricultural pollution abatement

- Transfers, effective January 1, 2015, the administration of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.
- Does all of the following to effect the transfer:
 - Authorizes a person that owns or operates agricultural land or an animal feeding operation (AFO) to develop and operate under a nutrient management plan rather than an operation and management plan as in current law;
 - Revises rule-making authority regarding the abatement of water degradation by agricultural pollutants, including requiring the Director of Agriculture to adopt the rules rather than the Chief of the Division of Soil and Water Resources and requiring the rules to establish abatement standards;
 - Authorizes the supervisors of soil and water conservation districts to develop nutrient management plans as necessary and to determine whether nutrient management plans that are developed by persons who own or operate agricultural land or AFOs comply with the abatement standards;
 - Applies the program to animal feeding operations rather than concentrated animal feeding operations; and
 - Establishes other provisions governing the administration and enforcement of the Agricultural Pollution Abatement Program.

- Requires the Directors of Natural Resources and Agriculture to enter into a memorandum of understanding regarding the transfer of the Program.
- States that operation and management plans that were developed or approved under existing law continue as nutrient management plans under the bill, as applicable.
- States that it is an affirmative defense in a private civil action for nuisances involving agricultural pollution if the person owning, operating, or otherwise responsible for agricultural land or an AFO is operating under a nutrient management plan, subject to certain conditions.
- Authorizes the Director to require a person that owns or operates agricultural land or an AFO, has not developed a nutrient management plan, and has caused agricultural pollution by failure to comply with abatement standards to operate under a nutrient management plan rather than an operation and management plan as in existing law.
- Provides for enforcement of its provisions governing nutrient management plans, including corrective actions, civil and administrative penalties, and injunctive relief.
- Narrows the scope of operation and management plans in current law and the statutes governing those plans to address only soil erosion and sediment control.
- Specifies that such an operation and management plan may include a soil erosion management plan, a timber harvest plan, or both.
- Generally prohibits specified state and local government officials from disclosing certain information provided by or regarding a person who operates under a nutrient management plan or an operation and management plan.
- Revises the membership of the Ohio Soil and Water Conservation Commission.

Review compliance certificates

- Eliminates provisions governing review compliance certificates issued under the Concentrated Animal Feeding Facilities Law, the operation of which has expired.

Enforcement of Oil and Gas Law

Material and substantial violations

- Expands the definition of "material and substantial violation" in the Oil and Gas Law.

Administrative, suspension, and revocation orders

- Authorizes the Chief of the Division of Oil and Gas Resources Management or the Chief's authorized representative to issue administrative orders to and suspend activities of any person, rather than only owners as in current law, for a violation of the Oil and Gas Law or related rules, permits, registration certificates, or orders.
- Authorizes the Chief, in an order finding that an owner or other person has committed a material and substantial violation, to suspend activities that are authorized under a permit or registration certificate issued under that Law or revoke a permit or registration certificate.
- Revises the Chief's authority to suspend certain activities and suspend or revoke an unused permit, and revises the requirements and procedures in accordance with which an owner or other person must be provided an opportunity to request that the order be rescinded.
- Authorizes the Chief to issue an order suspending the activities of an owner or other person for a specified period of time or revoking a permit or registration certificate associated with those activities if the Chief makes one of two specified determinations.
- Allows an owner or other person to appeal the order suspending activities or revoking a permit or registration certificate to the Oil and Gas Commission or the applicable court of common pleas.

Registration containing background information

- Requires a person who has not been issued a permit or registration certificate or who has not received an order authorizing activities under the Oil and Gas Law, but who intends to apply or has applied for a permit, registration certificate, or order to register with the Division of Oil and Gas Resources Management and provide specified information.

- Authorizes the Chief to deny an application if the Chief determines from the submitted information that the applicant or any key employee has a history of noncompliance with the Federal Water Pollution Control Act or related state laws.

Brine transportation

- Prohibits anyone from transporting brine in any manner, rather than just by vehicle as in current law, without being registered by the Chief.
- Requires an applicant for a registration certificate to transport brine to list each pipeline that will be used to transport brine.
- Prohibits a registered transporter from allowing any other person to use the transporter's registration certificate to transport brine.
- Prohibits a permit holder or owner of a well for which a permit has been issued under the Oil and Gas Law from entering into an agreement with a person who is not registered to transport brine to dispose of brine at the well.
- Requires a registered transporter to keep on each vessel, railcar, and container used to transport brine, in addition to each vehicle as in current law, a daily log and keep a daily log for each pipeline used to transport brine, and requires all logs to be made available upon request of the Chief, the Chief's authorized representative, or a peace officer.
- Requires registered transporters to legibly identify vessels, railcars, and containers employed in transporting or disposing of brine with reflective paint in addition to vehicles as in current law.
- Requires registered transporters to legibly identify pipelines so used in a manner similar to the identification of underground gas lines and to include specified information.

Penalties

- Increases civil penalties for certain violations of the Oil and Gas Law.
- Increases criminal penalties for certain violations of the Oil and Gas Law, and specifies that a violation of the statutes governing the management, transportation, and disposal of brine is a felony.

Response costs and liability

- States that a person who violates the general permit requirements of the Oil and Gas Law and provisions of that Law governing a permit for recovery operations, or any term or condition of a permit or order, is liable for damage or injury caused by the violation and for the cost of rectifying the violation and conditions caused by it.
- Establishes that a person may be subject to both a civil penalty and a term of imprisonment under the Oil and Gas Law for the same offense.
- Provides that if a person is convicted of or pleads guilty to a violation of any provision of the Oil and Gas Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any applicable response costs.

Mandatory pooling

- Authorizes the owner who has the right to drill to request a mandatory pooling order under the Oil and Gas Law rather than the owner of the tract of land who is also the owner of the mineral interest as in current law.
- Revises that Law regarding mandatory pooling to distinguish between mineral rights owners and surface rights owners.

Application of certain Oil and Gas Law provisions to public land

- Applies to public land provisions in the Oil and Gas Law governing minimum distances of wells from boundaries of tracts, voluntary and mandatory pooling, special drilling units, establishment of exception tracts to which minimum acreage and distance requirements do not apply, unit operation of a pool, and revision of an existing tract by a person holding a permit under that Law.
- Accomplishes the above change by revising the definition of "tract" in that Law by including land that is not taxed.

Application fee for permit to plug back an existing oil or gas well

- Requires an application for a permit to plug back an existing oil or gas well to be accompanied by a nonrefundable fee by removing the exemption in current law under which such an application need not be accompanied by a fee.

Emergency Planning and Community Right-to-Know Act requirements pertaining to oil and gas facilities

- Eliminates requirements under which oil and gas facilities must report to the Division of Oil and Gas Resources Management certain information regarding hazardous materials that is required to be reported by the federal Emergency Planning and Community Right-to-Know Act.
- By operation of law, requires those oil and gas facilities to report that information to the Emergency Response Commission in accordance with the state Emergency Planning Law.

Sale, transfer, or use of Department of Natural Resources property and water

- Requires the Director of Natural Resources to obtain the Governor's approval only for specified types of property transactions in an amount of \$1 million or more rather than generally requiring both the Governor's and Attorney General's approval of any such transaction in any amount as in current law.
- Generally requires any such transaction, regardless of the amount, to be executed in accordance with a provision of the Conveyances and Encumbrances Law that requires specific actions to be taken regarding conveyances of state real estate, including drafting by the Auditor of State and signature by the Governor.

Incidental taking permit

- Authorizes the Chief of the Division of Wildlife to establish a fee in rules for a permit issued under continuing law to a person operating an energy facility whose operation may result in the incidental taking of a wild animal.
- Narrows the definition of "energy facility" for that purpose to mean certain wind turbines and associated facilities, and defines "incidental taking" as the killing or injuring of a wild animal occurring by chance or without intention.

Department of Natural Resources notices

- Requires the Department of Natural Resources to publish notices regarding certain activities, projects, or improvements as contemplated in the general newspaper publication statute.

Enforcement of Water Pollution Control Law

- Increases criminal penalties for certain violations of the Water Pollution Control Law, and establishes culpable mental states regarding certain violations.
- Provides that if a person is convicted of or pleads guilty to a violation of any provision of that Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any applicable response costs.

Lead contamination of drinking water from plumbing

- Prohibits using certain plumbing supplies and materials that are not lead free in the installation or repair of a public water system or of any plumbing in a facility providing water for human consumption rather than requiring certain plumbing supplies and materials that are used in a public water system or in plumbing for facilities connected to a public water system to be lead free as in current law.
- Expands the list of plumbing supplies and materials to which the above prohibition applies to include plumbing fittings and plumbing fixtures.
- Generally prohibits a person from doing any of the following:
 - Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free;
 - Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies; and
 - Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use it in the installation or repair of any plumbing providing water for human consumption.
- Establishes several exemptions from the above prohibitions, including pipes, pipe fittings, or plumbing fittings or fixtures that are used exclusively for nonpotable services.
- Revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law.
- Establishes a formula for calculating the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture.

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CONTENT AND OPERATION

Agricultural pollution abatement

Administrative transfer

The bill transfers, effective January 1, 2015, the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural



Resources to the Department of Agriculture.¹ To effect that transfer, the bill does all of the following:

(1) Authorizes a person that owns or operates agricultural land or an animal feeding operation (AFO) (see below) to develop and operate under a nutrient management plan rather than an operation and management plan as in current law (see below). A nutrient management plan must be approved by the Director of Agriculture, the Director's designee, or the supervisors of the applicable soil and water conservation district (hereafter supervisors of a conservation district).² Under current law, an operation and management plan must be approved by the Chief of the Division of Soil and Water Resources or the supervisors of a conservation district. A nutrient management plan is a written record that contains both of the following: (1) implementation schedules and operational procedures for a level of management and pollution abatement practices that will abate water degradation by residual farm products (see below) or manure, including attached substances (hereafter water degradation), and (2) best management practices (see below) that are to be used by the owner or operator.³

(2) Revises rule-making authority regarding the abatement of water degradation by agricultural pollutants by requiring:

--The Director to adopt the rules rather than the Chief subject to the approval of the Ohio Soil and Water Conservation Commission as in existing law;

--The rules to establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming operations that will abate water degradation (hereafter abatement standards) rather than by animal waste, including attached substances, as in current law; and

--The Director to adopt rules that are identical to specified rules adopted by the Chief and currently in effect regarding the Program, including rules regarding composting of dead animals that is conducted in conjunction with agricultural operations.⁴

¹ Section 8.

² R.C. 939.03(A).

³ R.C. 939.01(E).

⁴ R.C. 939.02(C) and Section 4.

(3) Authorizes the supervisors of conservation districts to develop nutrient management plans as necessary and to determine whether nutrient management plans that are developed by persons who own or operate agricultural land or AFOs comply with abatement standards;⁵

(4) Applies the Program to animal feeding operations rather than concentrated animal feeding operations, which is not defined for that purpose in current law, and 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 permit issued under the Concentrated Animal Feeding Facilities Law or a discharge permit issued under the Water Pollution Control Law.⁶

(5) Requires a person who owns or operates an agricultural operation, or owns the animals raised by the owner or operator of an agricultural operation, and who wishes to conduct composting of dead animals resulting from the operation to comply with certain requirements, including composting the animals in accordance with rules adopted by the Director rather than by the Chief as in existing law, and requires any such person who fails to comply with those rules to prepare and operate under a composting plan in accordance with a requirement of the Director to take a corrective action rather than an order of the Chief as in existing law;⁷

(6) Transfers from the Chief to the Director responsibility for administering the Agricultural Pollution Abatement Fund, which is used to pay the costs of investigating, mitigating, minimizing, removing, or abating water degradation caused by agricultural pollution or an unauthorized release, spill, or discharge of manure or residual farm products into or on the environment that requires emergency action to protect the public health;⁸

(7) Creates the Soil and Water Administration Fund to pay the Chief's costs in administering and enforcing the Soil and Water Resources Law;⁹

(8) Establishes other provisions governing the administration and enforcement of the Agricultural Pollution Abatement Program, including requiring the Director to

⁵ R.C. 1515.08(R) and (S).

⁶ R.C. 939.01(I).

⁷ R.C. 939.04.

⁸ R.C. 939.11, 1511.071 (repealed), and 1511.99; Section 6.

⁹ R.C. 1511.09.

enter into cooperative agreements with the supervisors of an interested conservation district regarding compliance with the Director's rules pertaining to agricultural pollution abatement and authorizing the Director or the Director's designee to enter on property to inspect and investigate conditions relating to agricultural pollution of water.¹⁰ Agricultural pollution is failure to use management or conservation practices in farming operations to abate water degradation.¹¹

(9) Makes conforming changes regarding the Agricultural Pollution Abatement Program's transfer.¹²

The bill requires the Director of Natural Resources to enter into a memorandum of understanding with the Director of Agriculture regarding the transfer of the Program.¹³ It also states that operation and management plans that were developed or approved under existing law continue as nutrient management plans under the bill, as applicable.¹⁴

Complaints

Under the bill, a person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written, signed, and dated complaint to the Director or to the Director's designee. After receiving an oral complaint, the Director or the Director's designee may cause an investigation to be conducted to determine whether agricultural pollution has occurred or is imminent. After receiving a written, signed, and dated complaint, the Director or the Director's designee must cause such an investigation to be conducted.¹⁵

Affirmative defense

Under the bill, 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 approved nutrient management plan developed by the person or

¹⁰ R.C. 939.02, 939.06, 939.07, 939.08, 939.10, and 1515.08(T).

¹¹ R.C. 939.01(C).

¹² R.C. 901.22, 903.082, 903.25, 941.14, 953.22, 1515.01, 3734.02, 3734.029, 3745.70, 6111.03, 6111.04, and 6111.44.

¹³ Section 3.

¹⁴ Section 5.

¹⁵ R.C. 939.03(B).

with a nutrient management plan developed by the Director or the Director's designee or the supervisors of a conservation district or required by the Director. The bill states that nothing in its provisions governing the development of nutrient management plans, the filing of complaints regarding nuisances involving agricultural pollution, and the providing of an affirmative defense is in derogation of the authority to adopt rules or take corrective actions granted to the Director in the bill.¹⁶

Enforcement

Corrective actions and civil penalties

Under the bill, the Director may propose to require corrective actions and assess a civil penalty against an owner or operator of agricultural land or an AFO if the Director or the Director's designee determines that the owner or operator is doing one of the following (hereafter noncompliance):

(1) Not complying with abatement standards;

(2) Not operating in accordance with an approved nutrient management plan that is developed by the owner, with a nutrient management plan developed by the Director or the Director's designee or by the supervisors of the applicable conservation district, or with a nutrient management plan required by the Director under the bill (see below);

(3) Not complying with standards governing the composting of dead animals established by the Director under the bill; or

(4) Not operating in accordance with a composting plan that is approved in accordance with rules adopted by the Director under the bill or required by the Director under the bill (see below).¹⁷

The Director may include in the corrective actions a requirement that an owner or operator do one of the following:

(1) Operate under a nutrient management plan approved by the Director or the Director's designee under the bill;

(2) If the owner or operator has failed to operate in accordance with an existing nutrient management plan, operate in accordance with that plan;

¹⁶ R.C. 939.03(C).

¹⁷ R.C. 939.09(A)(1).

(3) Prepare a composting plan in accordance with rules adopted by the Director under the bill and operate in accordance with that plan; or

(4) If the owner or operator has failed to operate in accordance with an existing composting plan, operate in accordance with that plan.¹⁸

The Director may impose a civil penalty only if all of the following occur:

(1) The owner or operator receives a written notice that contains specified information, including the time period within which the owner or operator must correct the deficiencies and attain compliance;

(2) After the specified time period has elapsed, the Director or the Director's designee has inspected the agricultural land or AFO, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing; and

(3) The Director affords the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination, the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.¹⁹

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that noncompliance has occurred or is occurring, the Director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.²⁰

Additionally, a person who has violated rules adopted by the Director under the bill must pay a civil penalty in an amount established in those rules.²¹

Administrative penalties

In addition to any other penalties imposed under the bill, the Director may impose an administrative penalty against an owner or operator of agricultural land or an AFO if the Director or the Director's designee determines that the owner or operator is not in compliance with best management practices that are established in the

¹⁸ R.C. 939.09(A)(2).

¹⁹ R.C. 939.09(A)(3).

²⁰ R.C. 939.09(A)(4).

²¹ R.C. 939.09(A)(5).

Director's rules. 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, the Director's 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.²²

Actions of the Attorney General

The Attorney General, upon the written request of the Director, must bring an action for an injunction against any person violating or threatening to violate rules adopted by the Director or an order issued by the Director requiring compliance with a corrective action proposed by the Director. Also, in lieu of seeking civil penalties, the Director may request the Attorney General, in writing, to bring an action for a civil penalty against any person that has violated or is violating a rule adopted by the Director under the bill. The civil penalty cannot exceed \$10,000 per violation. Each day that a violation continues constitutes a separate violation.²³

Emergency actions

Notwithstanding any other enforcement provision in the bill, if the Director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the Director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order takes effect immediately. A person to whom the order is directed must comply immediately, but on application to the Director must be afforded an adjudication hearing in accordance with the Administrative Procedure Act as soon as possible and not later than 30 days after application. On the basis of the hearing, the Director must continue the order in effect, revoke it, or modify it. The Director's order is appealable in accordance with the Administrative Procedure Act. No emergency order can remain in effect for more than 120 days after its issuance.²⁴

A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure or residual farm products that requires emergency action to protect public health or safety or the environment is liable to the Director for

²² R.C. 939.09(D).

²³ R.C. 939.09(B) and (C).

²⁴ R.C. 939.09(E).

the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the Director, the Attorney General must bring a civil action against the responsible person or persons to recover those costs. Money recovered by the Attorney General and money collected from civil penalties by the Director or the Attorney General on the Director's behalf must be credited to the Agricultural Pollution Abatement Fund.²⁵

Current law

If a person violates rules adopted by the Chief of the Division of Soil and Water Resources governing abatement standards and water degradation or governing composting of dead animals, the Chief, after affording the person an adjudication hearing, must issue orders requiring compliance with the rules. As part of the compliance, the Chief may require a person to operate under an operation and management plan approved by the Chief or the Chief must require a person to prepare a composting plan and operate in accordance with that plan, as applicable.²⁶

Existing law prohibits a person from failing to comply with an order of the Chief.²⁷ Violation is a first degree misdemeanor. In addition, a violator may be required to pay for damages in an amount equal to the costs of reclaiming, restoring, or otherwise repairing any damage to public or private property caused by the violation.²⁸

The Chief may apply to the applicable court of common pleas for an order to compel a violator to cease the violation. The Chief also may issue emergency orders to take necessary action when an unauthorized release, spill, or discharge of animal waste, or a violation of a rule adopted by the Chief regarding composting of dead animals, occurs that causes water pollution. The Attorney General, upon the written request of the Chief, must bring appropriate legal action in Franklin County against any person who fails to comply with an order of the Chief.²⁹

Finally, a person may appeal an order of the Chief to the Franklin County Court of Common Pleas or the court of common pleas of the county in which the alleged violation exists. If the court finds that the order was unreasonable or unlawful, it must

²⁵ R.C. 939.09(F) and (G).

²⁶ R.C. 1511.02(G).

²⁷ R.C. 1511.07(A)(1).

²⁸ R.C. 1511.99.

²⁹ R.C. 1511.07.



vacate the order and make the order that it finds the Chief should have made. The judgment of the court is final unless reversed, vacated, or modified on appeal.³⁰

Operation and management plans

The bill narrows the scope of operation and management plans in current law and the statutes governing those plans to address only soil erosion and sediment control.³¹ It specifies that such an operation and management plan developed by a person who owns or operates agricultural land, developed by the Chief or by the supervisors of a conservation district, or required by an order issued by the Chief may include a soil erosion management plan, a timber harvest plan, or both.³²

A soil erosion management plan or timber harvest plan is a written record, developed or approved by the supervisors of a conservation district or the Chief, that contains implementation schedules and operational procedures for a level of land and water management that will abate wind or water erosion of the soil or abate water degradation by sediment from agricultural operations or timber operations, as applicable.³³

Disclosure of information

The bill generally prohibits specified state and local government officials from disclosing certain information provided by or regarding a person who operates under a nutrient management plan or an operation and management plan. Except as provided below, the bill prohibits the Director of Agriculture, an employee of the Department of Agriculture, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the Department or a district from disclosing 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 a nutrient management plan; or

³⁰ R.C. 1511.08, not in the bill.

³¹ R.C. 1511.01(G) and (H), 1511.02(E) and (G), 1511.021(B) and (C), 1511.05, 1511.07, and 1515.08(L) and (Q).

³² R.C. 1511.021(A)(2).

³³ R.C. 1511.01(G) and (I).

(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 AFO is in compliance with a nutrient management plan.³⁴

The Director or the supervisors of a district may release or disclose information specified above to a person or a federal, state, or local agency working in cooperation with the Director or the supervisors in the development of a nutrient 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.³⁵

Similarly, the bill prohibits the Director of Natural Resources, an employee of the Department of Natural Resources, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the Department or a district from disclosing the same information as described above for a person who owns or operates agricultural land and operates under an operation and management plan. It also provides for the release or disclosure of information under similar circumstances.³⁶

Additional definitions

The bill defines several relevant terms and revises the definitions of several others. Under the bill, best management practices are practices or a combination of practices that are determined to be the most effective and practicable means of preventing or reducing agricultural pollution sources to a level compatible with the attainment of applicable water quality standards. They include structural and nonstructural practices, conservation practices, and operation and maintenance procedures.³⁷ Residual farm products are bedding, wash waters, waste feed, and silage drainage, including compost products resulting from the composting of dead animals in agricultural operations regulated by the Director of Agriculture when certain conditions are met.³⁸

The bill replaces the term "agricultural pollution" with "sediment pollution" in the Soil and Water Resources and Soil and Water Conservation Commission Laws and

³⁴ R.C. 939.05(A).

³⁵ R.C. 939.05(B).

³⁶ R.C. 1511.023.

³⁷ R.C. 939.01(L).

³⁸ R.C. 939.01(F).

generally applies the existing definition of "agricultural pollution" to "sediment pollution" by removing references to animal waste.³⁹ Finally, the bill replaces the term "pollution abatement practice" with "erosion and sediment abatement practice" in the Soil and Water Resources Law. It generally applies the existing definition of "pollution abatement practice" to "erosion and sediment abatement practice" by specifying that it means, in part, any erosion control and sediment structure, practice, or procedure and the design, operation, and management associated with it rather than any erosion control or animal waste pollution abatement facility, structure, or procedure and the operation and management associated with it.⁴⁰ The bill makes conforming changes regarding the replacement of the term.⁴¹

Ohio Soil and Water Conservation Commission

The bill 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 the Ohio State University (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 be farmers, instead requiring that four of the appointed members be persons who have a knowledge of or interest in agricultural production as well as the natural resources of the state as in current law, and requiring one member to represent rural interests and one to represent urban interests.⁴²

³⁹ R.C. 1511.01(D).

⁴⁰ R.C. 1511.01(C).

⁴¹ R.C. 1511.01(F) and 1511.02(E)(5).

⁴² R.C. 1515.02 and Section 7.

The bill also eliminates the authority of the Commission to utilize the services of staff members in OSU's College of Agriculture as may be agreed upon by the Commission and the College.⁴³

Review compliance certificates

The bill eliminates provisions governing review compliance certificates issued under the Concentrated Animal Feeding Facilities Law, the operation of which has expired. Sub. S.B. 141 of the 123rd General Assembly, which took effect March 15, 2001, transferred the regulation of animal waste disposal at concentrated animal feeding facilities (CAFFs) from the Environmental Protection Agency to the Department of Agriculture. The act required the Director of Agriculture to finalize a program under which the Director was given the authority to issue, in part, permits to install and permits to operate for CAFFs. The Director finalized the program in August, 2002. Prior to the finalization, the Director of Environmental Protection issued installation permits for the installation or modification of disposal systems for animal waste that involved 1,000 or more animal units or any parts of those disposal systems in compliance with the Federal Water Pollution Control Act.

Current law specifies that on and after the date that is two years after the date on which the Director of Agriculture finalized the program for the issuance of permits to install for CAFFs, which was in August, 2004, and until the issuance of a permit to operate, no person lawfully could operate a CAFF in existence prior to August, 2004, unless the person applied for a review compliance certificate issued by the Director. Upon the Director's review of specified information concerning a facility and inspection of the facility, the Director had to issue a review compliance certificate to the facility if the Director determined that it satisfied certain criteria. A permit to operate had to be obtained prior to expiration of the review compliance certificate, which was valid for five years. Because the above deadlines have passed, the statutes governing review compliance certificates are obsolete.⁴⁴

Enforcement of Oil and Gas Law

Material and substantial violations

The bill expands the definition of "material and substantial violation" in the Oil and Gas Law to include failure to correct violations identified in a compliance notice,

⁴³ R.C. 1515.02.

⁴⁴ R.C. 903.01, 903.03, 903.04 (repealed), 903.07, 903.09, 903.10, 903.11, 903.12, 903.13, 903.16, 903.17, and 903.25.



receiving compliance notices for the same or similar violations that present an imminent danger to a person's health or safety or result in or are likely to result in substantial damage to the state's natural resources, and submission of falsified information under that Law.⁴⁵

Administrative, suspension, and revocation orders

The bill authorizes the Chief of the Division of Oil and Gas Resources Management or the Chief's authorized representative to issue administrative orders to and suspend the activities of any person, rather than only an owner as in current law, for a violation of the Oil and Gas Law or rules adopted under it, terms and conditions of a permit issued under it, a registration certificate required under it, or orders issued under it. It then makes necessary conforming changes to reflect the extension of the Chief's authority.⁴⁶

The bill authorizes the Chief, in an order finding that an owner or other person has committed a material and substantial violation, to suspend activities that are authorized under a permit or registration certificate issued under that Law or revoke a permit or registration certificate.⁴⁷ It also authorizes the Chief to immediately suspend, by order, injection and brine transportation activities, in addition to drilling, operating, and plugging activities as in current law, and suspend or revoke an unused permit if the Chief makes one of two findings as in current law. The bill removes the requirement that the activities must be in relation to a material and substantial violation. It retains the first finding in current law that the owner or person has failed to comply with an order. It revises the second finding by specifying that the owner or person is causing, engaging in, or maintaining a condition or activity that the Chief determines presents an imminent danger to the health or safety of a person, rather than the public as in current law, or results in or is likely to result in substantial damage to the natural resources of the state rather than immediate substantial damage as in current law.⁴⁸

The bill requires the Chief or the Chief's designee to provide an owner or other person an opportunity to be heard not later than five business days after the issuance of an order and to present evidence that either the condition or activity does not present an imminent danger to the health or safety of a person or is not likely to result in substantial damage to natural resources or that the condition or activity that is the basis

⁴⁵ R.C. 1509.01(EE).

⁴⁶ R.C. 1509.04(B).

⁴⁷ R.C. 1509.04(B)(3).

⁴⁸ R.C. 1509.04(C).



of a material and substantial violation has been corrected. Current law instead requires the Chief to provide an owner an opportunity to be heard and present evidence not later than five days after the issuance of an order. The evidence must demonstrate that either the condition or activity does not present an imminent danger to the public health or safety or is not likely to result in immediate substantial damage to natural resources or that required records, reports, or logs have been submitted. The bill revises current law requiring the Chief to rescind the order under specified circumstances to reflect the above changes.⁴⁹

Under the bill, the Chief may issue an order suspending the drilling, operating, plugging, injection, or brine transportation activities of the owner or other person for a specified period of time or revoking the permit or registration certificate associated with those activities that are the basis of the suspension order if the Chief determines from the evidence presented that either the activities present a threat to the health or safety of a person or are likely to result in substantial damage to natural resources or that the condition or activity that is the basis of a material and substantial violation has not been corrected.⁵⁰

The bill allows the owner or other person to appeal the order suspending activities or revoking a permit or registration certificate to the Oil and Gas Commission or to the court of common pleas of the county in which the activity that is the subject of the order is located. Current law allows an owner to appeal an original suspension order to the applicable court of common pleas.⁵¹

Under current law retained by the bill, if an owner fails to comply with a prior enforcement action by the Chief, the Chief may issue a suspension order without prior notification, but the Chief must give notice as soon thereafter as practical. The bill requires that not later than five business days, rather than calendar days, after the issuance of such an order, the Chief provide an opportunity to be heard. In addition, the bill allows the owner to appeal such a suspension order to the Oil and Gas Commission or to the applicable court of common pleas as in current law.⁵²

Finally, the bill relocates and slightly expands the Chief's existing authority to refuse to issue a permit for drilling or plugging to an applicant who has failed to

⁴⁹ R.C. 1509.04(D)(2) and (3).

⁵⁰ R.C. 1509.04(D)(3).

⁵¹ R.C. 1509.04(D)(3).

⁵² R.C. 1509.04(F).

comply with an order for a material and substantial violation or caused road damage. The bill includes in that provision an applicant for an injection permit or a permit for secondary or additional recovery operations.⁵³

Registration containing background information

The bill requires a person who has not been issued a permit or registration certificate or who has not received an order authorizing activities under the Oil and Gas Law, but who intends to apply or has applied for a permit, registration certificate, or order to register with the Division of Oil and Gas Resources Management on a form and in the manner prescribed by the Chief. The registration must include all of the following information:

(1) The name, address, and telephone number of the applicant's principal place of business;

(2) The address and telephone number of the applicant's principal place of business in Ohio if different from above;

(3) A listing of all key employees of the applicant (see below); and

(4) A listing of all of the following during the five years immediately preceding the submission of the registration:

(a) All consent orders entered into by the applicant or a key employee of the applicant in connection with any violation of the Federal Water Pollution Control Act by the applicant or a key employee or in connection with any violation of Ohio's or any other state's laws implementing that Act pursuant to delegation by the U.S. Environmental Protection Agency (state water pollution control laws) by the applicant or a key employee;

(b) All administrative or civil enforcement orders issued to the applicant or a key employee in connection with any violation of the Federal Water Pollution Control Act by the applicant or a key employee or in connection with any violation of state water pollution control laws by the applicant or a key employee;

(c) All civil actions in which the applicant or a key employee 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 in connection with any violation of the Federal Water Pollution

⁵³ R.C. 1509.05(B) and 1509.08.

Control Act by the applicant or a key employee or in connection with any violation of state water pollution control laws by the applicant or a key employee; and

(d) All criminal actions in which the applicant or a key employee pleaded guilty to or was convicted of any violation of the Federal Water Pollution Control Act or any violation of state water pollution control laws.⁵⁴

The bill then authorizes the Chief to issue an order denying an application if the Chief determines from the submitted information that the applicant or any key employee of the applicant has a history of noncompliance with the Federal Water Pollution Control Act or with state water pollution control laws that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate a proposed new well, brine transportation business, or other facility or operation in substantial compliance with the Oil and Gas Law and rules adopted under it. The bill also authorizes the Chief to issue an order denying an application submitted under that Law if the Chief finds that the submitted information is false or materially incomplete.⁵⁵

Finally, under the bill, a key employee is an individual who is employed by an applicant in a supervisory capacity or who is empowered to make discretionary decisions with respect to the applicant's operations or another person who has supervisory capacity or who is empowered to make such discretionary decisions. If the applicant has entered into a contract with another person to operate a well that is the subject of the application, a key employee also is an employee of the contractor who acts in a supervisory capacity or is empowered to make discretionary decisions with respect to the operation of the well. However, a key employee is not an employee who is exclusively engaged in any of the following: the physical or mechanical construction or operation of a well, physical or mechanical duties related to the transportation of brine, or physical or mechanical duties related to other activities authorized under the Oil and Gas Law.⁵⁶

Brine transportation

The bill prohibits anyone from transporting brine without being registered by the Chief rather than only prohibiting anyone from transporting brine by vehicle without being registered by the Chief. It makes conforming changes in the statute governing registration by removing references to transportation by vehicle only. The bill then

⁵⁴ R.C. 1509.051(A).

⁵⁵ R.C. 1509.051(B) and (C).

⁵⁶ R.C. 1509.051(D)(3).

requires an applicant for a registration certificate to transport brine to list each pipeline that will be used to transport brine in addition to each vehicle, vessel, railcar, and container as in current law.⁵⁷

In addition, the bill prohibits a registered transporter from allowing any other person to use the transporter's registration certificate to transport brine.⁵⁸ It also prohibits a permit holder or the owner of a well for which a permit has been issued under the Oil and Gas Law from entering into an agreement with a person who is not registered to transport brine to dispose of brine at the well.⁵⁹

Under existing law, a transporter must include with an application for registration a disposal plan for brine that in part includes a list of all disposal sites to be used. A registered transporter that intends to revise the plan must apply to the Chief in order to do so. The bill retains the requirement that an application for revision must include a list of all disposal sites of brine currently transported, but eliminates a requirement that an application also list all sources of brine currently transported. It also eliminates a requirement that approvals and denials of revisions must be by order of the Chief.⁶⁰

The bill requires each registered transporter to keep on each vessel, railcar, and container used to transport brine, in addition to each vehicle as in current law, a daily log and to keep a daily log for each pipeline used to transport brine. All logs must be made available upon request of the Chief, the Chief's authorized representative, or a peace officer. The bill requires a daily log to include, in addition to information specified in current law, the date and time brine is loaded or transported through a pipeline and the amount of brine transported through a pipeline, as applicable.⁶¹

The bill applies existing identification requirements for vehicles used to transport or dispose of brine to vessels, railcars, and containers, requiring registered transporters to identify them with reflective paint and to indicate specified information, including the transporter's name and telephone number. It also requires pipelines used to transport or dispose of brine to be legibly identified on the surface of the ground in a manner similar to the identification of underground gas lines. The identification must

⁵⁷ R.C. 1509.222(A) and (B).

⁵⁸ R.C. 1509.222(D).

⁵⁹ R.C. 1509.223(A)(2).

⁶⁰ R.C. 1509.222(E).

⁶¹ R.C. 1509.223(C).



indicate specified information, including the transporter's name and telephone number.⁶²

Penalties

The bill increases civil penalties for certain violations of the Oil and Gas Law as follows:

Type of violation	The bill	Current law
Violations of provisions of the Oil and Gas Law, including violations of any rules or orders and terms or conditions of a permit or registration certificate, for which no specific penalty is provided.	A civil penalty of not more than \$10,000 for each offense.	A civil penalty of not more than \$4,000 for each offense.
Violations of permitting requirements for the exploration for or extraction of minerals or energy other than oil or natural gas.	A civil penalty of not more than \$10,000 for each violation.	A civil penalty of not more than \$2,500 for each violation. ⁶³

The bill also increases criminal penalties for certain violations of that Law as follows:

Type of violation	The bill	Current law
Violations, including violations of any rules or orders and terms or conditions of a permit or registration certificate, for which no specific penalty is provided.	(1) For a first offense: a fine of \$500 to \$5,000 and imprisonment for not more than six months. (2) For each subsequent offense: a fine of \$1,000 to \$10,000 and imprisonment for not more than one year.	(1) For a first offense: a fine of \$100 to \$1,000. (2) For each subsequent offense: a fine of \$200 to \$2,000.
Violations of permitting requirements for the exploration for or extraction of minerals or energy other than oil or natural gas.	A fine of not more than \$5,000 for each day of each violation.	A fine of not more than \$5,000 for each violation.
Violations of provisions relating to the proper	The bill makes all such violations a felony and	

⁶² R.C. 1509.223(D).

⁶³ R.C. 1509.33.



Type of violation	The bill	Current law
handling, storage, management, disposal, and transportation of brine.	<p>increases the penalties according to the culpable mental state.</p> <ul style="list-style-type: none"> • Knowing violation: <ol style="list-style-type: none"> (1) For a first offense: a fine of \$10,000 to \$50,000, imprisonment for three years, or both. (2) For each subsequent offense: a fine of \$20,000 to \$100,000, imprisonment for six years, or both. • Negligent violation: <ol style="list-style-type: none"> (1) For a first offense: a fine of \$5,000 to \$25,000, imprisonment for not more than one year, or both. (2) For each subsequent offense: a fine of \$10,000 to \$50,000, imprisonment for two years, or both. 	<ul style="list-style-type: none"> • Knowing violation: <ol style="list-style-type: none"> (1) For a first offense: a fine of \$10,000, imprisonment for six months, or both. (2) For each subsequent violation: a fine of \$20,000, imprisonment for two years, or both. • Negligent violation: a fine of not more than \$5,000.
Violations of provisions regarding agreements to transport brine and transporter duties.	<ul style="list-style-type: none"> • Negligent violation: <ol style="list-style-type: none"> (1) For a first offense: a fine of not more than \$1,000. (2) For each subsequent offense: a fine of not more than \$10,000. 	<ul style="list-style-type: none"> • Violation (no culpable mental state is specified – the default culpable mental state is recklessness): <ol style="list-style-type: none"> (1) For a first offense: a fine of not more than \$500. (2) For each subsequent offense: a fine of not more than \$1,000.⁶⁴

Response costs and liability

Under the bill, anyone who violates the general permit requirements of the Oil and Gas Law or the provisions of that Law requiring a permit for additional and secondary recovery operations, or any term or condition of a permit or order issued by the Chief, is liable for any damage or injury caused by the violation and for the cost of rectifying the violation and conditions caused by it. The bill retains current law that imposes such liability on anyone who violates the provisions of that Law governing brine storage and brine transportation.⁶⁵

⁶⁴ R.C. 1509.99.

⁶⁵ R.C. 1509.33(G).

The bill also provides that a person may be subject to a civil penalty and a term of imprisonment for the same offense by revising current law to state that a person cannot be subject to both a civil penalty and a fine imposed as part of a criminal penalty under the Oil and Gas Law for the same offense. Current law instead provides that a person cannot be subject to both a civil penalty and a criminal penalty, including both a fine and a term of imprisonment, under that Law for the same offense.⁶⁶

Under the bill, if a person is convicted of or pleads guilty to a violation of any provision of the Oil and Gas Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any response costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.⁶⁷

Conforming changes

The bill makes conforming changes consistent with the above revisions.⁶⁸

Mandatory pooling

The bill authorizes the owner who has the right to drill to request a mandatory pooling order under the Oil and Gas Law rather than the owner of the tract of land who is also the owner of the mineral interest as in current law.

The bill also revises that Law regarding mandatory pooling to distinguish between mineral rights owners and surface rights owners as follows:

(1) Requires the Chief of the Division of Oil and Gas Resources Management to notify all mineral rights owners of tracts within the area proposed to be pooled by an order and included in the drilling unit of the filing of the application for a mandatory pooling order and of their right to a hearing rather than all owners of land within the area proposed to be included in the drilling unit;

(2) Requires a mandatory pooling order to allocate on a surface acreage basis a pro rata portion of the production to each tract pooled by the order rather than to the owner of each such tract, and requires the pro rata portion to be in the same proportion that the percentage of the tract's acreage, rather than the owner's acreage, is to the state minimum acreage requirements;

⁶⁶ R.C. 1509.33(H).

⁶⁷ R.C. 1509.99(E).

⁶⁸ R.C. 1509.02 and 1509.061 (1509.091).

(3) Requires a mandatory pooling order to specify the basis on which each mineral rights owner of a tract, rather than each owner of a tract, pooled by the order must share all reasonable costs and expenses of drilling and producing if the mineral rights owner, rather than the owner of a tract, elects to participate in the drilling and operation of the well;

(4) Prohibits surface operations or disturbances to the surface of the land from occurring on a tract pooled by an order without the written consent of the surface rights owner of the tract rather than the written consent of or a written agreement with the owner of the tract; and

(5) Provides that a mineral rights owner of a tract pooled by a mandatory pooling order who does not elect to participate in the risk and cost of the drilling and operation of a well must be designated as a nonparticipating owner in the drilling and operation and is not liable for actions or conditions associated with the drilling or operation rather than applying those provisions to the owner of a tract.⁶⁹

Application of certain Oil and Gas Law provisions to public land

The bill applies to public land provisions in the Oil and Gas Law governing minimum distances of wells from the boundaries of tracts, voluntary and mandatory pooling, special drilling units, establishment of exception tracts to which minimum acreage and distance requirements do not apply, unit operation of a pool, and revision of an existing tract by a person holding a permit under that Law. The bill accomplishes the change by revising the definition of "tract" to mean a single, individual parcel of land or a portion of a single, individual parcel of land rather than a single, individually taxed parcel of land appearing on the tax list as in current law.⁷⁰

Application fee for permit to plug back an existing oil or gas well

The bill requires an application for a permit to plug back an existing oil or gas well to be accompanied by a nonrefundable fee as follows:

(1) \$500 for a permit to conduct activities in a township with a population of fewer than 10,000;

(2) \$750 for a permit to conduct activities in a township with a population of 10,000 to 14,999; or

⁶⁹ R.C. 1509.27.

⁷⁰ R.C. 1509.01(J).

(3) \$1,000 for a permit to conduct activities in either a township with a population of 15,000 or more or a municipal corporation regardless of population.

The bill accomplishes the change by removing the exemption in current law under which such an application need not be accompanied by a fee.⁷¹

Emergency Planning and Community Right-to-Know Act requirements pertaining to oil and gas facilities

The bill eliminates requirements under which oil and gas facilities must report to the Division of Oil and Gas Resources Management certain information regarding hazardous materials that is required to be reported by the federal Emergency Planning and Community Right-to-Know Act (EPCRA). Thus, by operation of law, those facilities instead will report that information to the Emergency Response Commission in accordance with the state Emergency Planning Law. Specifically, the bill eliminates all of the following:

(1) A requirement that, as part of an oil or gas well owner's statement of production of oil, gas, and brine for a specified period of time to the Chief of the Division of Oil and Gas Resources Management, the owner include information that the owner must submit under EPCRA and regulations adopted under it;⁷²

(2) A provision that specifies that notwithstanding any provision in the state Emergency Planning Law to the contrary, an owner or operator of a facility that is regulated under the Oil and Gas Law (hereafter oil or gas facility) who has filed a log and production statement with the Chief in accordance with the Oil and Gas Law is generally deemed to have satisfied all the filing requirements established under the Emergency Planning Law;⁷³

(3) The fee that an owner or operator of an oil or gas facility must submit to the Commission when reporting inventories of the individual hazardous chemicals and extremely hazardous substances produced, used, or stored at the oil or gas facility. An owner or operator must submit a \$50 fee if the owner or operator owns or operates not more than 25 facilities and those facilities meet certain conditions. However, if an owner or operator owns or operates more than 25 facilities and those facilities meet certain

⁷¹ R.C. 1509.06(G).

⁷² R.C. 1509.11.

⁷³ R.C. 3750.081(A) (repealed).

conditions, the owner or operator must submit a \$50 fee and an additional \$10 fee for each facility in excess of 25, but the total fee cannot exceed \$900.⁷⁴

(4) A requirement that the Chief, in consultation with the Commission, adopt rules governing the creation and administration of an electronic database of information, including information that a person regulated under the Oil and Gas Law is required to submit under EPCRA, that the Chief considers appropriate for the purpose of responding to emergency situations; a requirement that the database be the means of providing and receiving the information discussed in item (2), above; and a requirement that the Chief's rules specify whether and to what extent the database and the information in it will be made accessible to the public;⁷⁵ and

(5) A requirement that the Commission and every local emergency planning committee and fire department establish a means by which to access, view, and retrieve information from the electronic database.⁷⁶

Sale, transfer, or use of Department of Natural Resources property and water

The bill requires the Director of Natural Resources to obtain the Governor's approval only for specified types of property transactions in an amount of \$1 million or more. Those property transactions are the sale, lease, or exchange of portions of lands or real or personal property of the Department; grants of easements or licenses for the use of the lands or property; and agreements for the sale of water from lands and waters under the Department's administration or care. Current law instead requires both the Governor's and Attorney General's approval of any such transaction in any amount unless that approval is not required for leases and contracts made under the Water Improvements Law and under the statutes governing public service facilities in state parks and the operation and maintenance of canals and canal reservoirs owned by the state.

The bill then requires any such transaction to be executed in accordance with a provision in the Conveyances and Encumbrances Law, if applicable, that generally requires all conveyances of real estate sold on behalf of the state to be drafted by the Auditor of State, executed in the name of the state, signed by the Governor,

⁷⁴ R.C. 3750.13 and 3750.14.

⁷⁵ R.C. 1509.23.

⁷⁶ R.C. 3750.081(B) (repealed).

countersigned by the Secretary of State, sealed with the state seal, and entered by the Auditor of State in records kept by the Auditor for that purpose.⁷⁷

Incidental taking permit

The bill authorizes the Chief of the Division of Wildlife to establish a fee in rules for a permit issued under continuing law to a person operating an energy facility whose operation may result in the incidental taking of a wild animal. It narrows the definition of "energy facility" for that purpose to mean wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at an aggregate capacity of five or more megawatts. Under current law, "energy facility" instead means a facility at which energy is produced. The bill accordingly eliminates the definition of "energy" as work or heat that is, or can be, produced from any fuel or source whatsoever. Finally, it defines "incidental taking" to mean the killing or injuring of a wild animal occurring by chance or without intention.⁷⁸

Department of Natural Resources notices

The bill requires the Department of Natural Resources to publish notices regarding certain activities, projects, or improvements as contemplated in the general newspaper publication statute. Continuing law requires the Department to supervise the design and construction of, and to make contracts for the construction, reconstruction, improvement, enlargement, alteration, repair, or decoration of, certain projects such as dam repairs, waterway safety improvements, and Division of Wildlife improvements.⁷⁹

The general newspaper publication statute requires that the first publication of a notice be made in its entirety in a newspaper of general circulation, but the second publication may be made in abbreviated form in a newspaper of general circulation and on the newspaper's Internet website if the newspaper has one. That statute also authorizes a state agency or political subdivision to eliminate any further newspaper publications, provided that the second, abbreviated notice meets all of the following requirements:

⁷⁷ R.C. 1501.01(G).

⁷⁸ R.C. 1533.081.

⁷⁹ R.C. 1501.011.



(1) It is published in the newspaper of general circulation in which the first publication of the notice was made and is published on that newspaper's Internet website if the newspaper has one.

(2) It is published on the state public notice website.

(3) It includes a title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice, and includes a statement that the notice is posted in its entirety on the state public notice website. The notice also may be posted on the state agency's or political subdivision's Internet website.

(4) It includes the Internet addresses of the state public notice website and of the newspaper's and state agency's or political subdivision's Internet website if the notice or advertisement is posted on those websites and the name, address, telephone number, and electronic mail address of the state agency, political subdivision, or other party responsible for publication of the notice.

A notice published on an Internet website must be published in its entirety.⁸⁰

Enforcement of Water Pollution Control Law

The bill increases criminal penalties for certain violations of the Water Pollution Control Law and establishes culpable mental states regarding certain violations as follows:

Type of violation	The bill	Current law
Violations of provisions regarding prohibited acts of pollution, compliance with effluent standards, and right of entry for enforcement purposes.	<p>A knowing violation is a felony punishable by: a fine of not more than \$25,000, imprisonment for not more than four years, or both.</p> <p>Each day of violation is a separate offense.</p> <p>A reckless violation is a misdemeanor punishable by: a fine of not more than \$10,000, imprisonment for not more than two years, or both.</p> <p>Each day of violation is a</p>	A violation is punishable by: a fine of not more than \$25,000, imprisonment for not more than one year, or both.*

⁸⁰ R.C. 7.16, not in the bill.

Type of violation	The bill	Current law
	separate offense.	
Violations of provisions regarding submission of false information.	<p>A knowing violation is a felony punishable by: a fine of not more than \$25,000, imprisonment for not more than four years, or both.</p> <p>Each day of violation is a separate offense.</p> <p>A reckless violation is a misdemeanor punishable by: a fine of not more than \$10,000, imprisonment for not more than two years, or both.</p> <p>Each day of violation is a separate offense.</p>	A violation is punishable by a fine of not more than \$25,000.*
Violations of orders, rules, or terms or conditions of a permit.	<p>A knowing violation is a felony punishable by: a fine of not more than \$25,000, imprisonment for not more than four years, or both.</p> <p>Each day of violation is a separate offense.</p> <p>A reckless violation is a misdemeanor punishable by: a fine of not more than \$10,000, imprisonment for not more than two years; or both.</p> <p>Each day of violation is a separate offense.</p>	A violation is punishable by: a fine of not more than \$25,000, imprisonment for not more than one year, or both.*
Violations of provisions regarding waste minimization and treatment plans and fees per ton of waste.	<p>A reckless violation is a misdemeanor punishable by: a fine of not more than \$10,000, imprisonment for not more than two years, or both.</p> <p>Each day of violation is a separate offense.</p>	A violation is punishable by a fine of not more than \$10,000.*
Violations of provision requiring approval for plans for disposal of industrial waste.	A reckless violation is a misdemeanor punishable by: a fine of not more than \$10,000, imprisonment for not more than	A violation is punishable by a fine of not more than \$500.*

Type of violation	The bill	Current law
	<p>two years, or both.</p> <p>Each day of violation is a separate offense.</p>	
<p>Violations of provision requiring approval of plans for installation of or changes in sewerage or treatment works.</p>	<p>A violation is punishable by a fine of not more than \$10,000.*</p> <p>Each day of violation is a separate offense.</p>	<p>A violation is punishable by a fine of not more than \$100.*</p>

* No culpable mental state is specified. The default culpable mental state is recklessness.

The bill also provides that if a person is convicted of or pleads guilty to a violation of any provision of the Water Pollution Control Law, the court imposing the sentence may order the person to reimburse the state agency or a political subdivision for any response costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.⁸¹

Lead contamination of drinking water from plumbing

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing. It first prohibits using any pipe, pipe fitting, plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of a public water system or of any plumbing in a residential or nonresidential facility providing water for human consumption. Current law instead requires pipes, pipe fittings, solder, and flux that are used in a public water system or in plumbing for residential or nonresidential facilities providing water for human consumption that are connected to a public water system to be lead free. The bill retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.⁸²

The bill also prohibits a person from doing any of the following:

(1) Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(2) Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies, except for the selling of plumbing supplies by manufacturers of those supplies; and

⁸¹ R.C. 6111.99.

⁸² R.C. 6109.10(B)(1) and (D)(1).

(3) Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.⁸³

The bill exempts the following from all of the above prohibitions:

(1) Pipes, pipe fittings, or plumbing fittings or fixtures, including backflow preventers, that are used exclusively for nonpotable services; and

(2) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are at least two inches in diameter.⁸⁴

Under the bill, the owner or operator of a public water system must identify and provide notice to persons that may be affected by lead contamination of their drinking water if the contamination results from the lead content in the construction materials of the public water distribution system, the corrosivity of the water supply is sufficient to cause the leaching of lead, or both. Current law instead requires each public water system to identify and provide notice to persons that may be affected by lead contamination of their drinking water.⁸⁵

In addition, the bill revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law. It retains current law specifying that solders and flux are lead free if they contain not more than .2% lead.⁸⁶

The weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture must be calculated by using the following formula: for each wetted component, the percentage of lead in the component must be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to determine the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component must be added together, and the sum of the weighted percentages must constitute the weighted average lead content of the product. The lead

⁸³ R.C. 6109.10(B)(2), (3), and (4) and (D)(2) and (3).

⁸⁴ R.C. 6109.10(D)(4).

⁸⁵ R.C. 6109.10(C).

⁸⁶ R.C. 6109.10(A)(1).

content of the material used to produce wetted components must be used to determine whether the wetted surfaces are lead free pursuant to the bill's revised definition of "lead free." For purposes of the lead contents of materials that are provided as a range, the maximum content of the range must be used.⁸⁷

HISTORY

ACTION	DATE
Introduced	03-18-14

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⁸⁷ R.C. 6109.10(A)(2).

