

As Passed by the House

126th General Assembly

Regular Session

2005-2006

Sub. S. B. No. 393

Senators Mumper, Grendell, Niehaus, Schuler, Harris

Representatives Aslanides, Domenick, Gibbs, Schlichter, Widener, Distel,

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A B I L L

To amend sections 903.08 and 6111.04 and to enact 1
section 6111.451 of the Revised Code to make 2
changes to the national pollutant discharge 3
elimination system program with respect to 4
concentrated animal feeding facilities, to require 5
the Director of Environmental Protection to adopt 6
rules specifying certain construction activities 7
that may be conducted prior to approval of plans 8
for a treatment or disposal works under the Water 9
Pollution Control Law, and to establish the 10
Preconstruction Rules Working Group for the 11
purpose of developing the rules. 12

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 903.08 and 6111.04 be amended and 13
section 6111.451 of the Revised Code be enacted to read as 14
follows: 15

Sec. 903.08. (A)(1) The director of agriculture is authorized 16
to participate in the national pollutant discharge elimination 17

system in accordance with the Federal Water Pollution Control Act. 18
Not later than one hundred eighty days after March 15, 2001, the 19
director shall prepare a state program in accordance with 40 20
C.F.R. 123.21 for point sources that are subject to this section 21
and shall submit the program to the United States environmental 22
protection agency for approval. 23

(2) On and after the date on which the United States 24
environmental protection agency approves the state program 25
submitted under division (A)(1) of this section, the authority to 26
enforce terms and conditions of NPDES permits previously issued 27
under division (J) of section 6111.03 or under section 6111.035 of 28
the Revised Code for the discharging, transporting, or handling of 29
storm water from an animal feeding facility or of manure is 30
transferred from the director of environmental protection to the 31
director of agriculture. Thereafter, the director of environmental 32
protection shall have no authority to enforce the terms and 33
conditions of those NPDES permits. After the transfer of authority 34
under division (A)(2) of this section, the NPDES permits 35
concerning which authority has been transferred shall be 36
considered to have been issued under this section. 37

(B)(1) On and after the date on which the United States 38
environmental protection agency approves the NPDES program 39
submitted by the director of agriculture under this section, no 40
person shall discharge manure from a point source into waters of 41
the state without first obtaining a NPDES permit issued by the 42
director of agriculture under this section. ~~The owner or operator~~ 43
~~of a concentrated animal feeding operation~~ Any person that is 44
required by the Federal Water Pollution Control Act to obtain a 45
permit for the discharge of manure shall apply to the director for 46
an individual NPDES permit or for coverage under a general NPDES 47
permit. ~~A concentrated animal feeding operation is deemed to be a~~ 48
~~point source that discharges manure into the waters of the state~~ 49

~~unless the director has determined that the concentrated animal
feeding operation has no potential to discharge manure into the
waters of the state. If an owner or operator of a concentrated
animal feeding operation receives notice from the director that
the director has determined that the concentrated animal feeding
operation has no potential to discharge manure, the owner or
operator is not required to apply for an individual NPDES permit
or for coverage under a general NPDES permit for that operation.
The director's determination shall be made in accordance with
rules The director is authorized to issue, revoke, modify, or deny
such an individual permit or issue, revoke, or deny coverage under
a general permit in compliance with all requirements of the
Federal Water Pollution Control Act. Violation of division (B)(1)
of this section is hereby declared to be a public nuisance for
purposes of state enforcement of this section.~~

(2) Persons that have been issued a permit by the director of
environmental protection under division (J) of section 6111.03 of
the Revised Code for the discharge of manure prior to the date on
which the United States environmental protection agency approves
the NPDES program submitted by the director of agriculture under
this section may continue to operate under that permit until it
expires or is modified or revoked. Such a permit shall be enforced
by the director of agriculture upon the transfer of authority to
enforce the terms and conditions of the permit under division
(A)(2) of this section.

(C)(1) On and after the date on which the United States
environmental protection agency approves the NPDES program
submitted by the director of agriculture under this section, no
person shall discharge storm water resulting from an animal
feeding facility without first obtaining a NPDES permit issued by
the director of agriculture in accordance with rules when such a
permit is required by the Federal Water Pollution Control Act.

Violation of division (C)(1) of this section is hereby declared to
be a public nuisance for purposes of state enforcement of this
section.

(2) Persons that have been issued a NPDES permit by the
director of environmental protection under Chapter 6111. of the
Revised Code for the discharge of storm water from an animal
feeding facility prior to the date on which the United States
environmental protection agency approves the NPDES program
submitted by the director of agriculture under this section may
continue to operate under that permit until it expires or is
modified or revoked. Such a permit shall be enforced by the
director of agriculture upon the transfer of authority to enforce
the terms and conditions of the permit under division (A)(2) of
this section.

(D) In accordance with rules, an applicant for a NPDES permit
issued under this section shall submit a fee in an amount
established by rule together with, except as otherwise provided in
division (F) of this section, an application for the permit to the
director of agriculture on a form prescribed by the director. The
application shall include any information required by rule. The
director or the director's authorized representative may help an
applicant for a NPDES permit during the application process by
providing guidance and technical assistance.

(E) The director of agriculture shall issue NPDES permits in
accordance with this section and section 903.09 of the Revised
Code. The director shall deny an application for a NPDES permit if
any of the following applies:

(1) The application contains misleading or false information.

(2) The administrator of the United States environmental
protection agency objects in writing to the issuance of the NPDES
permit in accordance with section 402(d) of the Federal Water

Pollution Control Act.	113
(3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.	114 115 116 117
Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.	118 119
(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:	120 121 122 123 124
(1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.	125 126 127
(2) The discharges are more appropriately authorized by a general permit than by an individual permit.	128 129
(3) Each category of point sources satisfies the criteria established in rules.	130 131
A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.	132 133 134 135 136 137 138 139 140 141 142

(G) The director of agriculture shall establish terms and 143
conditions of NPDES permits in accordance with rules. Terms and 144
conditions shall be designed to achieve and maintain full 145
compliance with national effluent limitations, national standards 146
of performance for new sources, the most current water quality 147
standards adopted under section 6111.041 of the Revised Code, the 148
most current antidegradation policy adopted under section 6111.12 149
of the Revised Code, and other requirements of the Federal Water 150
Pollution Control Act. In establishing the terms and conditions of 151
a NPDES permit, the director, to the extent consistent with that 152
act, shall consider technical feasibility and economic costs and 153
shall allow a reasonable period of time for coming into compliance 154
with the permit. 155

(H) An animal feeding facility that is required to obtain 156
both a NPDES permit and a permit to operate shall be issued a 157
single permit to operate incorporating the terms and conditions 158
established by both permits. The permit to operate expressly shall 159
designate the terms and conditions required under the NPDES 160
program as federally enforceable. All other provisions are 161
enforceable under state law only and expressly shall be designated 162
accordingly. 163

(I) A NPDES permit may be issued under this section for a 164
period not to exceed five years. 165

(J) A NPDES permit issued under this section may be renewed. 166
An application for renewal of a NPDES permit shall be submitted to 167
the director of agriculture at least one hundred eighty days prior 168
to the expiration date of the permit and shall comply with the 169
requirements governing applications for NPDES permits established 170
under this section and by rule. 171

(K)(1) No person shall make any false statement, 172
representation, or certification in an application for a NPDES 173

permit or in any form, notice, or report required to be submitted 174
to the director pursuant to terms and conditions established in a 175
NPDES permit issued under this section. 176

(2) No person shall render inaccurate any monitoring method 177
or device that is required under the terms and conditions of a 178
NPDES permit issued under this section. 179

(L) The director may modify, suspend, or revoke a NPDES 180
permit issued under this section for cause as established by rule. 181
No NPDES permit issued under this section shall be modified, 182
suspended, or revoked without a written order stating the findings 183
that led to the modification, suspension, or revocation. In 184
addition, the permittee has a right to an administrative hearing 185
in accordance with Chapter 119. of the Revised Code, except that 186
section 119.12 of the Revised Code does not apply. Further, an 187
order of the director modifying, suspending, or revoking a NPDES 188
permit may be appealed to the environmental review appeals 189
commission under sections 3745.04 to 3745.06 of the Revised Code. 190

(M)(1) No person shall violate any effluent limitation 191
established by rule. 192

(2) No person shall violate any other provision of a NPDES 193
permit issued under this section. 194

(3) Compliance with a NPDES permit issued under this section 195
constitutes compliance with this section. 196

(N) This section, including the state program authorized in 197
division (A)(1) of this section, shall be administered in a manner 198
consistent with the Federal Water Pollution Control Act. 199

Sec. 6111.04. (A) Both of the following apply except as 200
otherwise provided in division (A) or (F) of this section: 201

(1) No person shall cause pollution or place or cause to be 202
placed any sewage, sludge, sludge materials, industrial waste, or 203

other wastes in a location where they cause pollution of any 204
waters of the state. 205

(2) Such an action prohibited under division (A)(1) of this 206
section is hereby declared to be a public nuisance. 207

Divisions (A)(1) and (2) of this section do not apply if the 208
person causing pollution or placing or causing to be placed wastes 209
in a location in which they cause pollution of any waters of the 210
state holds a valid, unexpired permit, or renewal of a permit, 211
governing the causing or placement as provided in sections 6111.01 212
to 6111.08 of the Revised Code or if the person's application for 213
renewal of such a permit is pending. 214

(B) If the director of environmental protection administers a 215
sludge management program pursuant to division (S) of section 216
6111.03 of the Revised Code, both of the following apply except as 217
otherwise provided in division (B) or (F) of this section: 218

(1) No person, in the course of sludge management, shall 219
place on land located in the state or release into the air of the 220
state any sludge or sludge materials. 221

(2) An action prohibited under division (B)(1) of this 222
section is hereby declared to be a public nuisance. 223

Divisions (B)(1) and (2) of this section do not apply if the 224
person placing or releasing the sludge or sludge materials holds a 225
valid, unexpired permit, or renewal of a permit, governing the 226
placement or release as provided in sections 6111.01 to 6111.08 of 227
the Revised Code or if the person's application for renewal of 228
such a permit is pending. 229

(C) No person to whom a permit has been issued shall place or 230
discharge, or cause to be placed or discharged, in any waters of 231
the state any sewage, sludge, sludge materials, industrial waste, 232
or other wastes in excess of the permissive discharges specified 233

under an existing permit without first receiving a permit from the 234
director to do so. 235

(D) No person to whom a sludge management permit has been 236
issued shall place on the land or release into the air of the 237
state any sludge or sludge materials in excess of the permissive 238
amounts specified under the existing sludge management permit 239
without first receiving a modification of the existing sludge 240
management permit or a new sludge management permit to do so from 241
the director. 242

(E) The director may require the submission of plans, 243
specifications, and other information that the director considers 244
relevant in connection with the issuance of permits. 245

(F) This section does not apply to any of the following: 246

(1) Waters used in washing sand, gravel, other aggregates, or 247
mineral products when the washing and the ultimate disposal of the 248
water used in the washing, including any sewage, industrial waste, 249
or other wastes contained in the waters, are entirely confined to 250
the land under the control of the person engaged in the recovery 251
and processing of the sand, gravel, other aggregates, or mineral 252
products and do not result in the pollution of waters of the 253
state; 254

(2) Water, gas, or other material injected into a well to 255
facilitate, or that is incidental to, the production of oil, gas, 256
artificial brine, or water derived in association with oil or gas 257
production and disposed of in a well, in compliance with a permit 258
issued under Chapter 1509. of the Revised Code, or sewage, 259
industrial waste, or other wastes injected into a well in 260
compliance with an injection well operating permit. Division 261

(F)(2) of this section does not authorize, without a permit, any 262
discharge that is prohibited by, or for which a permit is required 263
by, regulation of the United States environmental protection 264

agency. 265

(3) Application of any materials to land for agricultural 266
purposes or runoff of the materials from that application or 267
pollution by animal waste or soil sediment, including attached 268
substances, resulting from farming, silvicultural, or earthmoving 269
activities regulated by Chapter 307. or ~~1515-~~ 1511. of the Revised 270
Code~~. Division (F)(3) of this section does not authorize, without~~ 271
a permit, any discharge that is prohibited by, or for which a 272
permit is required by, the Federal Water Pollution Control Act or 273
regulations adopted under it. 274

(4) The excrement of domestic and farm animals defecated on 275
land or runoff therefrom into any waters of the state~~. Division~~ 276
(F)(4) of this section does not authorize, without a permit, any 277
discharge that is prohibited by, or for which a permit is required 278
by, the Federal Water Pollution Control Act or regulations adopted 279
under it. 280

(5) On and after the date on which the United States 281
environmental protection agency approves the NPDES program 282
submitted by the director of agriculture under section 903.08 of 283
the Revised Code, ~~storm water from an animal feeding facility, as~~ 284
~~defined in section 903.01 of the Revised Code, or manure, as~~ 285
~~defined in that section~~ any discharge that is within the scope of 286
the approved NPDES program submitted by the director of 287
agriculture; 288

(6) The discharge of sewage, industrial waste, or other 289
wastes into a sewerage system tributary to a treatment works. 290
Division (F)(6) of this section does not authorize any discharge 291
into a publicly owned treatment works in violation of a 292
pretreatment program applicable to the publicly owned treatment 293
works. 294

(7) A household sewage treatment system or a small flow 295

on-site sewage treatment system, as applicable, as defined in 296
section 3718.01 of the Revised Code that is installed in 297
compliance with Chapter 3718. of the Revised Code and rules 298
adopted under it. Division (F)(7) of this section does not 299
authorize, without a permit, any discharge that is prohibited by, 300
or for which a permit is required by, regulation of the United 301
States environmental protection agency. 302

(8) Exceptional quality sludge generated outside of this 303
state and contained in bags or other containers not greater than 304
one hundred pounds in capacity. As used in division (F)(8) of this 305
section, "exceptional quality sludge" has the same meaning as in 306
division (Y) of section 3745.11 of the Revised Code. 307

(G) The holder of a permit issued under section 402 (a) of 308
the Federal Water Pollution Control Act need not obtain a permit 309
for a discharge authorized by the permit until its expiration 310
date. The Except as otherwise provided in this division, the 311
director of environmental protection shall administer and enforce 312
those permits within this state and may modify their terms and 313
conditions in accordance with division (J) of section 6111.03 of 314
the Revised Code. On and after the date on which the United States 315
environmental protection agency approves the NPDES program 316
submitted by the director of agriculture under section 903.08 of 317
the Revised Code, the director of agriculture shall administer and 318
enforce those permits within this state that are issued for any 319
discharge that is within the scope of the approved NPDES program 320
submitted by the director of agriculture. 321

Sec. 6111.451. Not later than one hundred eighty days after 322
the effective date of this section, the director of environmental 323
protection shall adopt rules in accordance with Chapter 119. of 324
the Revised Code specifying construction activities that do not, 325
by themselves, constitute installing works for the treatment or 326

disposal of sewage or other waste for which approval of plans is 327
required under section 6111.44 or 6111.45 of the Revised Code. The 328
activities shall include the grading and clearing of land, on-site 329
storage of portable parts and equipment, and the construction of 330
foundations or buildings that are not directly related to the 331
installation of treatment or disposal works. The rules also shall 332
allow specified initial activities that are part of the 333
installation of treatment or disposal works, such as the 334
installation of electrical and other utilities for the works, 335
prior to the approval of the plans for the works, provided that 336
the owner or operator of the works has submitted the complete 337
plans for the works to the director and has notified the director 338
that this activity will be undertaken prior to the approval of the 339
plans. Any activity that is undertaken under the rules adopted 340
under this section shall be at the risk of the owner or operator. 341
The rules adopted under this section, to the extent possible, 342
shall be consistent with rules adopted under division (F)(5) of 343
section 3704.03 of the Revised Code. 344

Section 2. That existing sections 903.08 and 6111.04 of the 345
Revised Code are hereby repealed. 346

Section 3. (A) There is hereby created the Preconstruction 347
Rules Working Group consisting of the following members appointed 348
by the Governor: 349

(1) A representative of the Ohio Farm Bureau Federation; 350

(2) A representative of the Ohio Manufacturers' Association; 351

(3) A representative of the Ohio Homebuilders Association; 352

(4) A representative of a statewide environmental advocacy 353
organization; 354

(5) A person representing the Ohio utility industry. 355

(B) The Governor shall make appointments to the Working Group 356
not later than thirty days after the effective date of this 357
section. Vacancies on the Working Group shall be filled in the 358
manner provided for original appointments. 359

(C) The Preconstruction Rules Working Group shall work with 360
the Director of Environmental Protection in the development of 361
proposed rules for the purposes of section 6111.451 of the Revised 362
Code as enacted by this act. The proposed rules shall be developed 363
not later than one hundred eighty days after the effective date of 364
this section. The Director then shall proceed to adopt the rules 365
as required by section 6111.451 of the Revised Code. Upon the 366
expiration of the one-hundred-eighty-day period for the 367
development of the proposed rules, the Preconstruction Rules 368
Working Group shall cease to exist. 369