

As Passed by the Senate

**126th General Assembly
Regular Session
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Am. S. B. No. 393

Senators Mumper, Grendell, Niehaus, Schuler, Harris

A BILL

To amend sections 903.08 and 6111.04 of the Revised Code to make changes to the national pollutant discharge elimination system program with respect to concentrated animal feeding facilities. 1
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 903.08 and 6111.04 of the Revised Code be amended to read as follows: 5
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Sec. 903.08. (A)(1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval. 7
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(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 of the Revised Code for the discharging, transporting, or handling of 15
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storm water from an animal feeding facility or of manure is
transferred from the director of environmental protection to the
director of agriculture. Thereafter, the director of environmental
protection shall have no authority to enforce the terms and
conditions of those NPDES permits. After the transfer of authority
under division (A)(2) of this section, the NPDES permits
concerning which authority has been transferred shall be
considered to have been issued under this section.

(B)(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 manure from a point source into waters of
the state without first obtaining a NPDES permit issued by the
director of agriculture under this section. ~~The owner or operator
of a concentrated animal feeding operation~~ Any person that is
required by the Federal Water Pollution Control Act to obtain a
permit for the discharge of manure shall apply to the director for
an individual NPDES permit or for coverage under a general NPDES
permit. ~~A concentrated animal feeding operation is deemed to be a
point source that discharges manure into the waters of the state
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

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Federal Water Pollution Control Act. Violation of division (B)(1) 53
of this section is hereby declared to be a public nuisance for 54
purposes of state enforcement of this section. 55

(2) Persons that have been issued a permit by the director of 56
environmental protection under division (J) of section 6111.03 of 57
the Revised Code for the discharge of manure prior to the date on 58
which the United States environmental protection agency approves 59
the NPDES program submitted by the director of agriculture under 60
this section may continue to operate under that permit until it 61
expires or is modified or revoked. Such a permit shall be enforced 62
by the director of agriculture upon the transfer of authority to 63
enforce the terms and conditions of the permit under division 64
(A)(2) of this section. 65

(C)(1) On and after the date on which the United States 66
environmental protection agency approves the NPDES program 67
submitted by the director of agriculture under this section, no 68
person shall discharge storm water resulting from an animal 69
feeding facility without first obtaining a NPDES permit issued by 70
the director of agriculture in accordance with rules when such a 71
permit is required by the Federal Water Pollution Control Act. 72
Violation of division (C)(1) of this section is hereby declared to 73
be a public nuisance for purposes of state enforcement of this 74
section. 75

(2) Persons that have been issued a NPDES permit by the 76
director of environmental protection under Chapter 6111. of the 77
Revised Code for the discharge of storm water from an animal 78
feeding facility prior to the date on which the United States 79
environmental protection agency approves the NPDES program 80
submitted by the director of agriculture under this section may 81
continue to operate under that permit until it expires or is 82
modified or revoked. Such a permit shall be enforced by the 83
director of agriculture upon the transfer of authority to enforce 84

the terms and conditions of the permit under division (A)(2) of 85
this section. 86

(D) In accordance with rules, an applicant for a NPDES permit 87
issued under this section shall submit a fee in an amount 88
established by rule together with, except as otherwise provided in 89
division (F) of this section, an application for the permit to the 90
director of agriculture on a form prescribed by the director. The 91
application shall include any information required by rule. The 92
director or the director's authorized representative may help an 93
applicant for a NPDES permit during the application process by 94
providing guidance and technical assistance. 95

(E) The director of agriculture shall issue NPDES permits in 96
accordance with this section and section 903.09 of the Revised 97
Code. The director shall deny an application for a NPDES permit if 98
any of the following applies: 99

(1) The application contains misleading or false information. 100

(2) The administrator of the United States environmental 101
protection agency objects in writing to the issuance of the NPDES 102
permit in accordance with section 402(d) of the Federal Water 103
Pollution Control Act. 104

(3) The director determines that the proposed discharge or 105
source would conflict with an areawide waste treatment management 106
plan adopted in accordance with section 208 of the Federal Water 107
Pollution Control Act. 108

Additional grounds for the denial of a NPDES permit shall be 109
those established in this chapter and rules. 110

(F) To the extent consistent with the Federal Water Pollution 111
Control Act, the director of agriculture shall issue general NPDES 112
permits that will apply in lieu of individual NPDES permits for 113
categories of point sources for which the director determines that 114

all of the following apply:

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(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.

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(2) The discharges are more appropriately authorized by a general permit than by an individual permit.

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(3) Each category of point sources satisfies the criteria established in rules.

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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.

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

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with the permit.

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

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

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

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(K)(1) No person shall make any false statement,
representation, or certification in an application for a NPDES
permit or in any form, notice, or report required to be submitted
to the director pursuant to terms and conditions established in a
NPDES permit issued under this section.

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

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(L) The director may modify, suspend, or revoke a NPDES
permit issued under this section for cause as established by rule.
No NPDES permit issued under this section shall be modified,
suspended, or revoked without a written order stating the findings
that led to the modification, suspension, or revocation. In
addition, the permittee has a right to an administrative hearing

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in accordance with Chapter 119. of the Revised Code, except that 177
section 119.12 of the Revised Code does not apply. Further, an 178
order of the director modifying, suspending, or revoking a NPDES 179
permit may be appealed to the environmental review appeals 180
commission under sections 3745.04 to 3745.06 of the Revised Code. 181

(M)(1) No person shall violate any effluent limitation 182
established by rule. 183

(2) No person shall violate any other provision of a NPDES 184
permit issued under this section. 185

(3) Compliance with a NPDES permit issued under this section 186
constitutes compliance with this section. 187

(N) This section, including the state program authorized in 188
division (A)(1) of this section, shall be administered in a manner 189
consistent with the Federal Water Pollution Control Act. 190

Sec. 6111.04. (A) Both of the following apply except as 191
otherwise provided in division (A) or (F) of this section: 192

(1) No person shall cause pollution or place or cause to be 193
placed any sewage, sludge, sludge materials, industrial waste, or 194
other wastes in a location where they cause pollution of any 195
waters of the state. 196

(2) Such an action prohibited under division (A)(1) of this 197
section is hereby declared to be a public nuisance. 198

Divisions (A)(1) and (2) of this section do not apply if the 199
person causing pollution or placing or causing to be placed wastes 200
in a location in which they cause pollution of any waters of the 201
state holds a valid, unexpired permit, or renewal of a permit, 202
governing the causing or placement as provided in sections 6111.01 203
to 6111.08 of the Revised Code or if the person's application for 204
renewal of such a permit is pending. 205

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

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

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

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

(C) No person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.

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

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

(F) This section does not apply to any of the following:	237
(1) Waters used in washing sand, gravel, other aggregates, or mineral products when the washing and the ultimate disposal of the water used in the washing, including any sewage, industrial waste, or other wastes contained in the waters, are entirely confined to the land under the control of the person engaged in the recovery and processing of the sand, gravel, other aggregates, or mineral products and do not result in the pollution of waters of the state;	238 239 240 241 242 243 244 245
(2) Water, gas, or other material injected into a well to facilitate, or that is incidental to, the production of oil, gas, artificial brine, or water derived in association with oil or gas production and disposed of in a well, in compliance with a permit issued under Chapter 1509. of the Revised Code, or sewage, industrial waste, or other wastes injected into a well in compliance with an injection well operating permit. Division (F)(2) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States environmental protection agency.	246 247 248 249 250 251 252 253 254 255 256
(3) Application of any materials to land for agricultural purposes or runoff of the materials from that application or pollution by animal waste or soil sediment, including attached substances, resulting from farming, silvicultural, or earthmoving activities regulated by Chapter 307. or 1515. <u>1511.</u> of the Revised Code + . <u>Division (F)(3) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it.</u>	257 258 259 260 261 262 263 264 265
(4) The excrement of domestic and farm animals defecated on land or runoff therefrom into any waters of the state + . <u>Division</u>	266 267

(F)(4) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it. 268
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(5) On and after the date on which the United States 272
environmental protection agency approves the NPDES program 273
submitted by the director of agriculture under section 903.08 of 274
the Revised Code, ~~storm water from an animal feeding facility, as~~ 275
~~defined in section 903.01 of the Revised Code, or manure, as~~ 276
~~defined in that section~~ any discharge that is within the scope of 277
the approved NPDES program submitted by the director of 278
agriculture; 279

(6) The discharge of sewage, industrial waste, or other 280
wastes into a sewerage system tributary to a treatment works. 281
Division (F)(6) of this section does not authorize any discharge 282
into a publicly owned treatment works in violation of a 283
pretreatment program applicable to the publicly owned treatment 284
works. 285

(7) A household sewage treatment system or a small flow 286
on-site sewage treatment system, as applicable, as defined in 287
section 3718.01 of the Revised Code that is installed in 288
compliance with Chapter 3718. of the Revised Code and rules 289
adopted under it. Division (F)(7) of this section does not 290
authorize, without a permit, any discharge that is prohibited by, 291
or for which a permit is required by, regulation of the United 292
States environmental protection agency. 293

(8) Exceptional quality sludge generated outside of this 294
state and contained in bags or other containers not greater than 295
one hundred pounds in capacity. As used in division (F)(8) of this 296
section, "exceptional quality sludge" has the same meaning as in 297
division (Y) of section 3745.11 of the Revised Code. 298

(G) The holder of a permit issued under section 402 (a) of 299
the Federal Water Pollution Control Act need not obtain a permit 300
for a discharge authorized by the permit until its expiration 301
date. ~~The~~ Except as otherwise provided in this division, the 302
director of environmental protection shall administer and enforce 303
those permits within this state and may modify their terms and 304
conditions in accordance with division (J) of section 6111.03 of 305
the Revised Code. On and after the date on which the United States 306
environmental protection agency approves the NPDES program 307
submitted by the director of agriculture under section 903.08 of 308
the Revised Code, the director of agriculture shall administer and 309
enforce those permits within this state that are issued for any 310
discharge that is within the scope of the approved NPDES program 311
submitted by the director of agriculture. 312

Section 2. That existing sections 903.08 and 6111.04 of the 313
Revised Code are hereby repealed. 314