



**H.B. 397**

126th General Assembly  
(As Introduced)

**Reps. Hagan, Collier, Law, Harwood**

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**BILL SUMMARY**

**Permits to install program**

- Requires the Director of Environmental Protection to establish a program for the issuance of permits to install for new construction and demolition debris facilities and the modification of existing facilities by the Director or boards of health in lieu of the existing program under which licenses are issued for the establishment and modification of facilities.
- Requires the Director to adopt rules establishing requirements and procedures for the permits to install program.
- Establishes requirements governing what must be submitted with an application for a permit to install, including the name and address of the applicant, designs and specifications for the proposed new or modified facility, background information, and other specified information.
- Requires a person applying for a permit to install to submit specified background information with the application, and authorizes the Director or a board of health to deny the permit if the Director or board finds that the person has a history of substantial noncompliance with any environmental laws of Ohio, other states, the United States, or another country.
- Requires the Director or a board of health, not later than 60 days after the receipt of an application for a permit for a new or modified construction and demolition debris facility, to hold a public hearing in the township or municipal corporation in which the facility or proposed facility is or is to be located, and establishes notification requirements regarding the public hearing.

### **Siting criteria**

- Establishes additional siting criteria for new construction and demolition debris facilities and modifications of existing facilities, and requires the siting criteria to be applied during the permitting process rather than the licensing process.

### **Operational plans and fire safety plans**

- With respect to plans for the operation of a construction and demolition debris facility that are required by rules adopted under current law, requires the plans to include the use of best management practices and contingency plans for effective action in response to fire or explosion.
- Requires the plans for operation of a construction and demolition debris facility to be submitted with an application for an initial license for the operation of the facility, and requires annual updates of the plans if necessary.
- Requires the applicant for an initial license for the operation of a facility to submit a copy of the plan for effective action in response to fire or explosion to the appropriate fire department, and requires necessary updates to the plan to be submitted.

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

- Adds that rules adopted under current law by the Director governing ground water monitoring at construction and demolition debris facilities must require that ground water monitoring be capable of determining impacts resulting from operation of a facility, include provisions for ground water assessment and corrective actions, and require the submission of an annual ground water monitoring report.
- Requires the Director to adopt rules establishing requirements for the monitoring and sampling of leachate at construction and demolition debris facilities, and specifies that the rules must include requirements that leachate be sampled at least annually, that the leachate be sampled for at least 64 different parameters, and that leachate sampling results be reported to the Director and the applicable board of health.

- Generally applies the new rules related to ground water monitoring and leachate monitoring and sampling only to facilities for which a permit to install has been issued after the bill's effective date.
- Precludes the Director or a board of health, as applicable, from paying for the installation or sampling of ground water monitoring wells or the laboratory analysis of ground water samples at or from a new construction and demolition debris facility or a new modification of a facility for which a permit to install has been issued under the bill from the proceeds of disposal fees levied for ground water monitoring purposes under current law.

### **Closure and post-closure care**

- Revises the statute that requires the Director of Environmental Protection to adopt rules establishing financial assurance requirements for the closure of facilities by requiring the rules to provide that financial assurance amounts must be determined for each facility by the Director or board of health, as applicable, but specifies that financial assurance for the closure of a facility cannot be less than \$13,000 per acre of land that has been, is being, or is to be used for the disposal of construction and demolition debris.
- Requires the Director to adopt rules establishing requirements for the post-closure care of construction and demolition debris facilities for a minimum period of five years.
- Requires the Director to adopt rules establishing financial assurance requirements for the post-closure care of facilities that allow the determination of the amount of financial assurance to be on a case by case basis, and requires that post-closure care financial assurance be for a minimum period of five years after the closure of a facility.

### **Pulverized debris**

- Generally prohibits the disposal of pulverized debris at a construction and demolition debris facility, and defines "pulverized debris" to mean debris that has been shredded, crushed, ground, or otherwise rendered to such an extent that the debris is unidentifiable as construction and demolition debris.

- Establishes an exception to the general prohibition against the acceptance of pulverized debris by authorizing pulverized debris to be disposed of at a construction and demolition debris facility if the debris has been certified as construction and demolition debris in accordance with rules adopted by the Director.
- Authorizes a board of health or the Director to request that pulverized debris be removed from a construction and demolition debris facility.

#### **Transfer facility certifications**

- Prohibits a construction and demolition debris facility from accepting material from a transfer facility unless the transfer facility has certified that the material is construction and demolition debris, prohibits a transfer facility from transferring material to a construction and demolition debris facility unless the transfer facility has provided the required certification, and requires the Director to adopt rules governing the certification.
- Authorizes the Director to issue an order prohibiting construction and demolition debris facilities in Ohio from accepting material from transfer facilities that have violated the bill's certification requirements.

#### **Rejected debris shipments**

- Requires the owner or operator of a construction and demolition debris facility to notify the Director if the owner or operator rejects a shipment of debris because the shipment does not comply with the Construction and Demolition Debris Law.
- Requires the transporter of a rejected shipment to notify the Director of the ultimate disposition of the rejected shipment.
- Requires the Director to adopt rules regarding rejected shipment notifications.

#### **Exemptions by boards of health**

- Requires a board of health, before granting an exemption from the Construction and Demolition Debris Law, to obtain approval of the exemption from the Director of Environmental Protection.

### **Operator certification and training**

- Requires the Director, in consultation with boards of health and a statewide association representing construction and demolition debris facilities, to establish a program for the certification of operators of facilities and continuing education training requirements for operators.

### **Computerized database**

- Requires the Director to establish and maintain a computerized database or databases composed of the record of the annual inspection of each construction and demolition debris facility, information from the annual survey of each health district by the Director, and ground water and leachate data collected in accordance with rules.

### **Use of Hazardous Waste Clean-up Fund**

- Authorizes money in the existing Hazardous Waste Clean-up Fund to be used to conduct remediation activities at construction and demolition debris facilities.

### **Declaration of emergency**

- Declares an emergency, and specifies that the reason for the emergency is that a moratorium on the siting of new construction and demolition debris facilities and expansions of existing facilities is due to expire on December 31, 2005, and additional statutory requirements related to such facilities are necessary to protect public health and the environment.

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## CONTENT AND OPERATION

### Introduction

The Construction and Demolition Debris Law, which was enacted in 1990, requires each construction and demolition debris disposal facility to be licensed and inspected annually by either the applicable board of health or the Director of Environmental Protection. An initial license is required for a new facility or the modification of an existing facility. The Law establishes specific requirements for the issuance of initial licenses. The Director only licenses facilities, and conducts inspections, in areas of the state in which a board of health has not been approved by the Director to administer a construction and demolition debris management program.

The Construction and Demolition Debris Law establishes siting criteria and licensing procedures and requirements and provides for enforcement of its provisions. It also requires the Director to adopt rules governing facilities, their inspection, and the issuance of licenses. The rules must ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution. Unlike the Solid, Infectious, and Hazardous Waste Law, the Law does not require a background investigation of an applicant for a license.

The bill makes several changes in the construction and demolition debris management program. It requires the issuance of a permit to install for a new construction and demolition debris facility or a modification of an existing facility in lieu of an initial license and requires an applicant for a permit to install to submit background information about past violations of environmental laws together with the application for the permit. The bill establishes additional siting criteria, adds requirements for public hearings on permit applications, requires rules to be adopted governing ground water and leachate monitoring, adds requirements for closure and the post-closure care of facilities, adds requirements governing pulverized debris, reporting of rejected waste loads, and certification of

materials from transfer facilities, and adds several other requirements to the Construction and Demolition Debris Law.

### **Permits to install program**

Current law prohibits anyone from establishing, modifying, or operating a construction and demolition debris facility without a construction and demolition debris facility installation and operation license. For a proposed new or modified facility, such a license is required before the facility may commence operation. At least 90 days before the proposed operation of the facility, the person proposing to open or modify the facility must submit an application for a license with accompanying plans, specifications, and information regarding the facility and its method of operation to the appropriate board of health or to the Director of Environmental Protection if the facility is or is to be located in a health district whose board of health is not approved by the Director to implement a construction and demolition debris program.<sup>1</sup> After receipt of the application and other required materials, the board of health or the Director, as applicable, must determine if the proposed facility or modification complies with standards established under the Construction and Demolition Debris Law and rules adopted by the Director. A license may be issued with such terms and conditions as the board or Director finds necessary to ensure that the facility will comply with that Law and the rules. If an initial license is approved and after the commencement of operations of a new or modified facility, the owner or operator of the facility is required to annually renew its license. (Sec. 3714.06.)

The bill replaces the requirement that a proposed new construction and demolition debris facility or modification of an existing facility receive an initial license with a requirement that a proposed new facility or modification receive a permit to install. Facilities are still required under the bill to receive an annual operating license.

### **Establishment of permit to install program**

The bill requires the Director of Environmental Protection to establish a program for the issuance of permits to install for new construction and demolition debris facilities and the modification of existing facilities not later than 90 days after the bill's effective date (sec. 3714.051(A)(1)). On and after the bill's effective date, no person may modify an existing construction and demolition debris facility or construct a new facility without first obtaining a permit to install

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<sup>1</sup> Current law requires the Director of Environmental Protection to establish a list of health districts that are approved to license construction and demolition debris facilities and implement a construction and demolition debris program (sec. 3714.09).

issued by the board of health of the health district in which the facility is or is to be located or from the Director if the facility is or is to be located in a health district that is not approved by the Director to implement a construction and demolition debris program (sec. 3714.051(A)(2)).

In establishing the program, the Director must adopt rules establishing standards and procedures for the issuance of permits to install (sec. 3714.02(A)). The rules must include standards for the design and construction of facilities, information that must be included in the designs and plans required to be submitted with an application for a permit (see "**Application and permit requirements**," below), and criteria for approving, disapproving, or requiring modification of the designs and plans. In addition, the rules are required to establish the information that must be included with an application for a permit to install in addition to the information that is specified in the bill (see "**Application and permit requirements**," below). The rules also must establish procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and grounds for the denial, modification, suspension, or revocation of permits. Finally, the rules must establish time periods after which a permit to install expires, a requirement that a person that is required to obtain both a permit to install and a license for the operation of a facility submit applications for the permit and license simultaneously, and any other requirements that the Director determines necessary in order to establish the program. (Sec. 3714.051(A)(1) to (8).)

#### **Application and permit requirements**

The bill authorizes the Director, the Director's authorized representative, a board of health, or an authorized representative of the board to assist an applicant for a permit during the permitting process by providing guidance and technical assistance (sec. 3714.051(B)). Under the bill, an applicant must submit an application to a board of health or the Director, as applicable, on a form that the Director prescribes. The applicant must include with the application all of the following:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) The designs and plans for the proposed construction and demolition debris facility or modification of a facility that include the proposed location of the facility or modification, design and construction plans and specifications, anticipated beginning and ending dates for work performed, and any other related information that the Director requires by rule;



(3) The background information required under the bill (see "**Background information**," below);

(4) An application fee of \$2,000. If a board of health collects the application fee, the board must deposit money from the fee into the special fund of the health district created under existing law for the purpose of funding the district's construction and demolition debris program. If the Director collects the application fee, the Director must transmit money from the fee to the Treasurer of State to be credited to the existing Construction and Demolition Debris Oversight Fund, which is used by the Director to implement the construction and demolition debris program. Not later than six months after the issuance of a permit to install, a board of health or the Director, as applicable, must refund the application fee received to the person that submitted the application for the permit.

(5) Any other information required by the Director in accordance with rules. (Sec. 3714.051(C)(1) to (5).)

A permit to install may be issued with terms and conditions that a board of health or the Director, as applicable, finds necessary to ensure that the facility will comply with the Construction and Demolition Debris Law and rules adopted under it and to protect public health and safety and the environment (sec. 3714.051(D)).

A permit to install expires after a time period specified by the Director or board of health, as applicable, in accordance with rules adopted under the bill unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time, in which case the Director or board, as applicable, may extend the expiration date of a permit to install upon request of the applicant (sec. 3714.051(E)). The Director or a board of health, as applicable, may issue, deny, modify, suspend, or revoke a permit to install in accordance with rules (sec. 3714.051(F)).

A board of health must notify the Director of its receipt of an application for a permit to install. A board may request the Director to review an application for a permit and issue or deny it when the board determines that additional expertise is required for such a review. Upon a board of health's issuance of a permit to install for a construction and demolition debris facility, the board must mail a copy of the permit to the Director together with approved plans, specifications, and information regarding the facility. (Sec. 3714.051(G).)

### **Background information**

As indicated above, one of the items that must be included with an application for a permit to install is information concerning the background of the

owner or operator of the proposed new or modified facility. Under the bill, that background information must include all of the following:

(1) A listing of all construction and demolition debris facilities that the owner or operator of the proposed new or modified facility has operated or is operating in Ohio;

(2) A listing of the construction and demolition debris facilities that the owner or operator has operated or is operating elsewhere in the United States together with a listing of the construction and demolition debris facilities that the owner or operator has operated or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator 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, and all criminal actions in which the owner or operator pleaded guilty or was convicted, during the 15 years immediately preceding the submission of the application, in connection with any violation of an applicable state or federal law pertaining to environmental protection that was alleged to have occurred or to be occurring at any construction and demolition debris facility that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any construction and demolition debris facility that the owner or operator has operated or is operating outside the United States; and

(4) A listing of all administrative enforcement orders, civil actions, or criminal actions pending at the time of the submission of the application for a permit to install in connection with a violation of any applicable state or federal law or law of another country pertaining to environmental protection that was alleged to have occurred or to be occurring at any construction and demolition debris facility that the owner or operator has operated or is operating in the United States or outside the United States. (Sec. 3714.052(A)(1) to (4).)

The lists of construction and demolition debris facilities operated by the owner or operator within or outside Ohio or outside the United States must include all such facilities operated by the owner or operator during the 15-year period immediately preceding the submission of the application (sec. 3714.052(A)).

If the applicant for a permit to install has been involved in any prior activity involving the operation of a construction and demolition debris facility, the Director or a board of health, as applicable, may deny the application if the Director or board finds from the application, the information submitted under the bill, pertinent information submitted to the Director or board, and other pertinent information obtained by the Director or board at the Director's or board's

discretion that the applicant or persons associated with the applicant, in the operation of construction and demolition debris facilities, have a history of substantial noncompliance with state and federal laws pertaining to environmental protection or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified construction and demolition debris facility in substantial compliance with the Construction and Demolition Debris Law and rules adopted under it (sec. 3714.052(B)).

### **Public hearings**

The bill requires that not later than 60 days after the receipt of an application for a permit to install a new construction and demolition debris facility or to modify an existing facility, the Director of Environmental Protection or a board of health, as applicable, must hold a public hearing in the township or municipal corporation in which the facility or proposed facility is or is to be located. At least 30 days prior to the public hearing, the person that submitted the application must provide notice of the time, day, and location of the public hearing in a newspaper of general circulation in the locality of the facility or proposed facility and must mail a copy of the notice to the Director or the board of health, whichever is applicable. Further, at least 30 days prior to the public hearing, the person that submitted the application must provide notification of the public hearing by certified mail to the owner of each parcel of real property that is adjacent to the facility or proposed facility. (Sec. 3714.053.)

### **Miscellaneous**

The bill makes changes in the Construction and Demolition Debris Law that are necessary to conform that Law to the bill's requirements related to the issuance of permits to install. For example, the bill requires that a license for the operation of a new construction and demolition debris facility or a facility that is to be modified must be submitted at the time that an application for a permit to install is submitted for the facility (sec. 3714.06.) Other changes involve the addition of references to permits to install in statutes dealing with exemptions from the Construction and Demolition Debris Law, the authority of boards of health to implement that Law, and enforcement of that Law (secs. 3714.04, 3714.05, 3714.09, 3714.11, 3714.12, and 3714.13).

### **Siting criteria**

Current law generally prohibits the Director or a board of health from issuing a license for the establishment and operation of a construction and demolition debris facility within certain flood-prone areas and within the boundaries of sole source aquifers. The bill revises the prohibition by prohibiting

the issuance of a permit to install to establish a new facility or to modify an existing facility when the limits of construction and demolition debris placement at the new facility, rather than any portion of the new facility, or at any new portion of the existing facility are proposed to be located in those areas. (Sec. 3714.03(B).) "Limits of construction and demolition debris placement" is defined to mean the areal and vertical limits of debris placement within a construction and demolition debris facility and includes the volume of debris placement (sec. 3714.03(A)(3)). The bill defines "new portion of an existing facility" as any area of an existing facility that has not been designated as an active or inactive licensed disposal area (sec. 3714.03(A)(5)).

Current law provides that for purposes of determining the location of the 100-year flood plain of a watercourse under the above siting criteria, if no maps have been prepared, the boundaries of the 100-year flood plain must be determined based upon a design storm of seven inches of precipitation in 24 hours and upon standard methodologies set forth in "Urban Hydrology for Small Watersheds" and section 4 of the "National Engineering Hydrology Handbook" of the Soil Conservation Service of the United States Department of Agriculture. The bill revises the requirement by eliminating "of a watercourse" for purposes of determining a 100-year flood plain. In addition, the bill eliminates "a design storm of seven inches of precipitation in 24 hours." Thus, the bill provides that the boundaries of a 100-year flood plain must be determined based upon standard methodologies set forth in the Soil Conservation Service documents specified above. (Secs. 3714.03(B)(1) and 3714.04.)

The bill also prohibits the Director or a board from issuing a permit to install a new construction and demolition debris facility or to modify an existing facility when the limits of construction and demolition debris placement at the new facility or at any new portion of the existing facility are proposed to be located in any of the following locations:

(1) Within 100 feet of a perennial stream as defined by the United States Geological Survey seven and one-half minute quadrangle map or within 100 feet of a category 3 wetland. The bill defines "category 3 wetland" to mean a wetland that supports superior habitat or hydrological or recreational functions as determined by an appropriate wetland evaluation methodology acceptable to the Director. "Category 3 wetland" includes a wetland with high levels of diversity, a high proportion of native species, and high functional values and includes a wetland that contains or provides habitat for threatened or endangered species. "Category 3 wetland" may include high quality forested wetlands, including old growth forested wetlands, mature forested riparian wetlands, vernal pools, bogs, fens, and wetlands that are scarce regionally. (Sec. 3714.03(A)(2).)

(2) Within 100 feet of the facility's property line;

(3) Within 500 feet of a residential or public water supply well. However, there are three circumstances having different requirements for siting near a residential or public water supply well. First, if the well is controlled by the owner or operator of the construction and demolition debris facility, the limits of construction and demolition debris placement may be located any distance from the well, provided that the location of the limits of construction and demolition debris placement does not violate any other siting criteria. Second, if the well is hydrologically separated from the limits of construction and demolition debris placement, those limits may be located within the distance comprising the hydrological separation. Finally, if the well is upgradient from the limits of the construction and demolition debris placement and the geological material that separates the uppermost aquifer and the limits of construction and demolition debris placement consists of at least five feet of material that has a maximum hydraulic conductivity of  $1 \times 10^{-5}$  cm/sec and all of the geologic material comprising the five feet has a hydraulic conductivity equal to or less than  $1 \times 10^{-5}$  cm/sec, the limits of construction and demolition debris placement cannot be located within 250 feet of the well.

(4) Within 500 feet of a state park established or dedicated under the Division of Parks and Recreation Law, a state park purchase area established under that Law, any unit of the national park system, or any property that lies within the boundaries of a national park or recreation area, but that has not been acquired or is not administered by the Secretary of the United States Department of the Interior, located in Ohio, or any area located in this state that is recommended for study for potential inclusion in the national park system in accordance with federal law;

(5) Within 500 feet of a natural area, any area established by the Department of Natural Resources as a state wildlife area under the Division of Wildlife Law and rules adopted under it, any area that is formally dedicated as a nature preserve under the Division of Natural Areas and Preserves Law, or any area designated by the United States Department of the Interior as a national wildlife refuge. The bill defines "natural area" as either of the following: (1) an area designated by the Director of Natural Resources as a scenic river under the Division of Natural Areas and Preserves Law, or (2) an area designated by the United States Department of the Interior as a national scenic river (sec. 3714.03(A)(4)).

(6) Within 500 feet of a lake; and

(7) Within 500 feet of an occupied dwelling. (Sec. 3714.03(C).)

The bill also prohibits the Director or a board from issuing a permit to install a new construction and demolition debris facility or to modify an existing

facility when the limits of construction and demolition debris placement at the new facility or at any new portion of the existing facility are proposed to be located less than five feet above the uppermost aquifer system (sec. 3714.03(D)). The bill defines "aquifer system" as one or more geologic units or formations that are wholly or partly saturated with water and are capable of storing, transmitting, or yielding ground water at a time weighted average rate greater than one-tenth of a gallon per minute over a 24-hour period unless the geologic units or formations yield less than three gallons per minute, but more than one-tenth of a gallon per minute and the ground water yield is less than 50% of the yield of another saturated zone under a construction and demolition debris facility that is the likely source of water used for any purpose within one mile of the facility (sec. 3714.03(A)(1)).

In addition, the bill prohibits the Director or a board from issuing a permit to install a new construction and demolition debris facility or to modify an existing facility when any road at the new facility or at any new portion of an existing facility is proposed to be located within 500 feet of an occupied dwelling or within 100 feet from the facility's property line (sec. 3714.03(E)).

Finally, neither the Director nor any board of health is permitted to issue a permit to install to establish a new construction and demolition debris facility unless the facility will have all of the following:

(1) Roads that follow the facility's perimeter. The roads must be constructed in a manner that allows use in all weather conditions and will withstand the anticipated degree of use with minimum erosion and generation of dust.

(2) Surface water drainage and sediment controls that are required by the Director; and

(3) If the facility is proposed to be located in an area in which an applicable zoning resolution allows residential construction, vegetated earthen berms or an equivalent barrier with a minimum height of six feet separating the facility from adjoining property. (Sec. 3714.03(F).)

### **Operational plans and fire safety plans**

Current law requires the Director to adopt rules establishing requirements respecting written, narrative plans for the operation of construction and demolition debris facilities. The bill specifies that the rules must require the owner or operator of a facility to use best management practices. The rules also must require as a part of the plan of operation of a facility the inclusion of the contingency plans for effective action in response to fire or explosion at the



facility as required in rules adopted under current law. (Secs. 3714.02(G) and 3714.061(A).) In addition, the bill requires a person who submits an application for an initial license to operate a construction and demolition debris facility to submit with the application the plans for the operation of the facility that are required by rules. The owner or operator of the facility then must submit any necessary updates to the plans for the operation of the facility as required by rules when submitting an application for an annual license for the continued operation of the facility. (Sec. 3714.061(A).) The bill requires a board of health to submit a copy of the plans for operation of a facility to the Director upon the issuance by the board of a license for the operation of the facility (sec. 3714.06(C)).

Under the bill, a person who submits an application for an initial license to operate a construction and demolition debris facility must provide a copy of the plan for effective action in response to fire or explosion at the facility to the fire department that would respond to the facility. The plan must be submitted to the fire department at the time that the application for the license is submitted. In addition, the owner or operator of the facility must submit any necessary updates to the plan at the time that the owner or operator submits an application for an annual license for continued operation of the facility. (Sec. 3714.061(B).)

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

Current law requires the Director to adopt rules establishing requirements for the installation of ground monitoring wells and the monitoring of ground water quality at any facility where the operation of the facility threatens to contaminate ground water. The bill adds additional requirements that must be included in the rules governing ground water monitoring. Specifically, the bill provides that the rules must require that ground water monitoring be capable of determining impacts resulting from the operation of construction and demolition debris facilities. The rules also must include provisions for ground water assessment and corrective actions for impacts to ground water. Further, the rules must require that the owner or operator of a construction and demolition debris facility submit a monitoring report to the Director that has been prepared by a qualified ground water scientist and that includes all of the following:

- (1) A determination of any impacts to ground water from the migration of contaminants from the facility;
- (2) A list of the contaminants from the facility that may be causing contamination of ground water; and
- (3) Recommendations for actions that should be taken to investigate and remediate the source of any ground water contamination. (Sec. 3714.02(E).)

The bill defines "qualified ground water scientist" to mean a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has at least five years of relevant experience in ground water hydrogeology and related fields that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective measures (sec. 3704.01(I)).

Current law does not include a specific requirement that the Director adopt rules governing the monitoring and sampling of leachate.<sup>2</sup> The bill requires the Director to adopt rules establishing requirements for the monitoring and sampling of leachate. The rules must include all of the following:

(1) A requirement that the owner or operator of a construction and demolition debris facility provide for sampling of leachate at least annually. However, the rules must require that if leachate is recirculated through a facility instead of being disposed of off-site, the leachate be sampled at least every calendar quarter.

(2) A requirement that the owner or operator of a facility sample for at least 64 parameters that the Director must establish by rule. The 64 parameters must include arsenic, copper, and chromium.

(3) Procedures for establishing parameters in addition to the 64 parameters required above;

(4) Requirements governing facilities that do not have a system for sampling leachate. The rules must require that the owner or operator of such a facility monitor ground water for the same parameters required for leachate monitoring and sampling.

(5) Requirements governing the reporting of leachate sampling data. The rules must require that reports be submitted to the Director and the applicable board of health. (Sec. 3714.02(F).)

Under the bill, the new rules related to ground water monitoring and leachate monitoring and sampling apply only to construction and demolition debris facilities or modifications of construction and demolition debris facilities for which a permit to install has been issued after the bill's effective date.

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<sup>2</sup> Presumably, any current requirements in rules related to leachate monitoring or sampling have been adopted in accordance with general rule making authority in the Construction and Demolition Debris Law that authorizes the Director to adopt rules that ensure that construction and demolition debris facilities will not cause or contribute to air or water pollution. (Sec. 3714.02.)



However, the Director may apply the new rules to a facility in operation on the bill's effective date if the facility is conducting leachate and ground water monitoring and the Director determines that the application of the rules is necessary to protect public health and the environment. (Sec. 3714.02.)

### **Use of fee levied for ground water monitoring**

Current law authorizes the Director to adopt rules establishing a fee of not more than 5¢ per cubic yard or 10¢ per ton on the disposal of construction and demolition debris. This fee is in addition to the general disposal fees otherwise established by law. Proceeds collected by the Director or a board of health, as applicable, must be used by the Director or board to conduct ground water monitoring at construction and demolition debris facilities through the installation of ground water monitoring wells and the performance of ground water sampling and laboratory analysis. Such ground water monitoring may be conducted only at certain facilities in operation before April 15, 2005. The bill precludes the Director or a board, as applicable, from paying for the installation of ground water monitoring wells, ground water sampling, or the laboratory analysis of ground water samples at or from a new construction and demolition debris facility for which a permit to install has been issued under the bill or at or from a new modification of a facility for which a permit to install has been issued under the bill. (Sec. 3714.071.)

### **Closure and post-closure care**

Current law requires the Director of Environmental Protection to adopt rules establishing requirements for the closure of facilities and requirements governing financial assurance for their closure. The rules regarding closure must include minimum requirements for the closure of all facilities and additional requirements that are reasonably related to the location of a facility and the type and quantity of materials disposed of in it (sec. 3714.02(I)). Concerning financial assurance, the rules are required to include provisions requiring the owner or operator of a facility, before being issued a license for the facility, to submit a surety bond, a letter of credit, or other acceptable financial assurance in an amount equal to the estimated costs for closure of those portions of the facility that have been, are being, or are to be used for the disposal of construction and demolition debris. The costs are required to be estimated in the closure plan for the facility approved by the board of health of the health district in which the facility is or is to be located or the Director if the facility is located in a health district that is not approved to implement a construction and demolition debris program. (Sec. 3714.02(H).) There is no requirement in current law that the Director adopt rules related to post-closure care.

The bill retains the requirements in current law regarding the rules governing closure. However, it revises the requirements concerning financial assurance for the closure of facilities. The bill generally eliminates the provisions of law that require financial assurance for the closure of a facility to be in an amount equal to the estimated costs for closure as set forth in the facility's closure plan. Instead, the bill requires the Director to adopt rules that require the owner or operator of a facility, before being issued an initial license for the facility, to submit a surety bond, a letter of credit, or other acceptable financial assurance in an amount determined by the Director or the appropriate board of health, as applicable. The rules must allow the Director or board of health to adjust the amount of the surety bond, letter of credit, or other financial assurance in conjunction with the issuance of an annual license. However, the bill specifies that, under the rules, the amount of the surety bond, letter of credit, or other acceptable financial assurance for the closure of a facility must be not less than \$13,000 per acre of land that has been, is being, or is to be used for the disposal of construction and demolition debris. (Sec. 3714.02(I)(1).)

The bill also requires the Director to adopt rules establishing requirements for the post-closure care of construction and demolition debris facilities for a minimum period of five years after closure of a facility as well as rules governing financial assurance requirements for the post-closure care of facilities. With respect to the financial assurance requirements, the bill requires the rules to allow the Director or appropriate board of health, as applicable, to determine the amount of a surety bond, a letter of credit, or other acceptable financial assurance for the post-closure care of a facility on a case by case basis. The rules must require the owner or operator of a facility to provide post-closure financial assurance for a minimum period of five years after the closure of a facility. (Sec. 3714.02(I)(2) and (K).)

### **Pulverized debris**

Under the bill, a construction and demolition debris facility cannot accept pulverized debris except as provided in the bill (sec. 3714.081(A)). "Pulverized debris" is defined by the bill to mean debris that has been shredded, crushed, ground, or otherwise rendered to such an extent that the debris is unidentifiable as construction and demolition debris (sec. 3714.01(H)). Pulverized debris may be accepted at a construction and demolition debris facility if it has been certified as construction and demolition debris in accordance with rules adopted under the bill (sec. 3714.081(B)). The Director is required to adopt rules establishing procedures and requirements for the certification of pulverized debris as construction and demolition debris that must include at least both of the following:

(1) A requirement that the structure at which the debris was generated was inspected by the appropriate board of health, the Director, or another appropriate authority designated by rule; and

(2) A system of tracking the debris from the point of generation to the point of disposal for purposes of ensuring that it is not mixed with debris that is not construction and demolition debris. (Sec. 3714.02(L).)

Under the bill, the board of health of a health district in which a construction and demolition debris facility is located, the Director, or an authorized representative of either may request the removal of pulverized debris that has been brought to the construction and demolition debris facility. Upon the receipt of such a request, the owner or operator of the facility must do one of the following:

(1) Immediately cause the pulverized debris to be removed from the facility; or

(2) Store the pulverized debris at a location at the facility where construction and demolition debris is not disposed of for not more than ten days after the receipt of a request to remove the debris from the facility. Not later than the end of the ten-day period, the owner or operator must cause the pulverized debris to be removed from the facility. (Sec. 3714.081(C).)

### **Transfer facility certifications**

The bill precludes a construction and demolition debris facility accepting material from a transfer facility unless the transfer facility has certified that the material is construction and demolition debris. Further, a transfer facility cannot transfer material to a construction and demolition debris facility unless the transfer facility has provided such certification to the owner or operator of the construction and demolition debris facility. (Sec. 3714.082(A).) The bill defines "transfer facility" to mean a site, location, tract of land, installation, or building that is used or intended to be used for the purpose of transferring construction and demolition debris that was generated off the premises of the facility from vehicles or containers into other vehicles for transportation to a construction and demolition debris facility (sec. 3714.01(K)). It requires the Director to adopt rules establishing procedures and requirements governing certification of construction and demolition debris by transfer facilities (sec. 3714.02(M)).

Certification by a transfer facility must be in a written form prescribed by the Director and must be included with each shipment of material certifying that the material is construction and demolition debris. The certification must be provided to the owner or operator of a construction and demolition debris facility

at the time that the construction and demolition debris that is the subject of the certification is presented at the facility for disposal. The owner or operator of the construction and demolition debris facility must keep a copy of the certification. (Sec. 3714.082(A).)

If a transfer facility fails to provide certification to the owner or operator of a construction and demolition debris facility, or if a transfer facility falsely certifies debris as construction and demolition debris to the owner or operator of a construction and demolition debris facility, the owner or operator immediately must notify the Director of the lack of certification or of the falsely certified debris. The Director subsequently must investigate the information provided by the owner or operator. (Sec. 3714.082(B).)

If, through the investigation, the Director verifies the information provided by the owner or operator, the Director may issue an order in the same manner as general enforcement orders are issued under the Construction and Demolition Debris Law prohibiting any construction and demolition debris facility in Ohio from accepting construction and demolition debris from the transfer facility for a time period specified in the order. The Director must provide written notification of the order to each owner or operator of a construction and demolition debris facility located in Ohio. (Sec. 3714.082(B).)

### **Rejected debris shipments**

Under the bill, if the owner or operator of a construction and demolition debris facility rejects a shipment of debris because the shipment is not eligible for disposal at the facility under the requirements of the Construction and Demolition Debris Law and rules adopted under it, the owner or operator must notify the Director of the rejection of the shipment. The notification must be made in accordance with rules adopted under the bill (see below) and must include the date and time that the shipment was rejected, the name of the transporter of the shipment, and the reason for rejecting the shipment. (Sec. 3714.083(A).)

A transporter of a rejected shipment must notify the Director of the ultimate disposition of the shipment after the shipment's rejection. The notification must be made in accordance with rules (see below) and must include the date and time that the shipment was ultimately disposed of after its rejection, the location of the disposal, and the name of the owner or operator of the construction and demolition debris facility or solid waste facility that accepted the shipment for disposal. (Sec. 3714.083(B).)

The Director is required to adopt rules governing the provision of notification by owners and operators of construction and demolition debris facilities and the provision of notification by transporters (sec. 3714.02(N)).

### **Exemptions by boards of health**

Under current law, the Director or the board of health having territorial jurisdiction generally may provide by order for exemptions from any provision of the Construction and Demolition Debris Law or rules adopted under it. The Director or board may provide an exemption to any person disposing of or proposing to dispose of construction and demolition debris in such quantities or under such circumstances that, in the determination of the Director or board, are unlikely to adversely affect the public health or safety or the environment or to create a fire hazard. Exemptions cannot be granted from certain provisions of the Law related to locating a facility within the boundaries of a 100-year flood plain or a sole source aquifer or to the disposal of asbestos or asbestos-containing materials or products. (Sec. 3714.04(A).)

The bill requires that before a board of health issues an order that exempts a person disposing of or proposing to dispose of construction and demolition debris, the board must provide written notice to the Director of the board's intention to grant an exemption. The notice must contain a description of the facts surrounding the proposed exemption and any other information that the Director may require. Not later than 30 days after receipt of the notice, the Director must approve or deny the proposed exemption. The Director must provide a copy of the Director's determination to the board of health that submitted the notice of the proposed exemption. If the Director approves the proposed exemption, the board of health may issue the order granting the exemption. If the Director denies the proposed exemption, the board of health cannot issue the order. (Sec. 3714.04(B).) The Director's determination is not appealable (sec. 3714.04(C)).

### **Operator certification and training**

Under the bill, the Director, in consultation with boards of health and a statewide association representing construction and demolition debris facilities, is required to establish a program for the certification of operators of construction and demolition debris facilities and must establish continuing education training requirements for those operators as part of the certification program (sec. 3714.062(A)). To establish the program, the Director must adopt rules governing the certification and training of operators of construction and demolition debris facilities (sec. 3714.02(O)).

The bill requires the program for the certification of operators, including the continuing education training requirements, to include instruction in and to emphasize, at a minimum, the laws and best management practices governing construction and demolition debris facilities and disposal of construction and demolition debris (sec. 3714.062(B)). An operator of a construction and demolition debris facility must successfully complete a minimum of ten hours of

continuing education training each calendar year (sec. 3714.062(D)). The Director must approve persons who provide continuing education training for operators (sec. 3714.062(C)).

### **Computerized database**

The bill requires the Director to establish and maintain a computerized database or databases composed of the record made of the annual inspection of each construction and demolition debris facility required under current law, information from the annual survey of each health district made by the Director under current law, and ground water and leachate data collected in accordance with rules adopted under the bill. The information and data must be stored in such a manner that they are easily retrieved and available for sharing with health districts and all other interested persons. (Sec. 3714.20.)

### **Use of Hazardous Waste Clean-up Fund**

Current law establishes the Hazardous Waste Clean-up Fund consisting of certain money collected under the Solid, Hazardous, and Infectious Waste Law and from natural resource damages paid to the state under the federal Comprehensive Environmental Response, Compensation, and Liability Act. Money in the Fund is required to be used to pay for the certain investigation and clean-up costs under the Solid, Hazardous, and Infectious Waste Law. The bill also allows money in the Fund to be expended to conduct remediation activities at construction and demolition debris facilities. (Sec. 3734.28.)

### **Declaration of emergency**

The bill declares an emergency and specifies that the reason for the emergency is that a moratorium on the siting of new construction and demolition debris facilities and expansions of existing facilities is due to expire on December 31, 2005, and additional statutory requirements related to such facilities are necessary to protect public health and the environment (Section 3).

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## **HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	10-25-05	pp. 1762-1763

H0397-I-126.doc/jc