



# OHIO LEGISLATIVE SERVICE COMMISSION

## Bill Analysis

Jeff Grim

### **S.B. 224**

131st General Assembly  
(As Introduced)

**Sens.** Brown, Cafaro, Schiavoni, Thomas, Williams, Yuko, Tavares

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## **BILL SUMMARY**

### **Agricultural operation and management plans**

- Modifies the law governing agricultural operation and management plans as follows:
  - Makes developing and operating under an approved plan mandatory for persons who own or operate 50 or more acres of agricultural land or small or medium concentrated animal feeding operations;
  - Requires the plans to include an agronomic rate standard for applying fertilizer or manure.
- Makes it mandatory, rather than discretionary as under current law, for the Director of Agriculture to:
  - Require corrective actions and assess civil penalties in response to certain actions by the owner or operator of agricultural land or an animal feeding operation, including not complying with certain standards established in rules or not operating in compliance with an operation and management plan;
  - Mandate in the corrective actions that the owner or operator operate under an approved operation and management plan or composting plan.
- Eliminates two procedural steps that must be completed before the Director can impose a civil penalty, including providing written notice of corrective actions required to attain compliance.

## Annual reports - manure applied by animal feeding facilities

- Requires the owner or operator of an animal feeding facility that applies 350 tons or more of dry manure per year to file an annual report with the Director.
- Authorizes a certified livestock manager to file the report on behalf of the owner or operator.
- Requires the report to include information such as the total estimated amount of manure applied on the surface of agricultural fields by the owner, operator, or manager.
- Requires the Director to adopt rules that establish requirements and procedures governing the filing of a report, including guidelines for estimating the annual amount of manure generated by agricultural animals on an animal feeding facility.

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## CONTENT AND OPERATION

### Agricultural operation and management plans

#### Background

Generally, current law authorizes, but does not require, a person who owns or operates agricultural land or an animal feeding operation (AFO) to develop and operate under an operation and management plan. The plan may be approved by the Director of Agriculture or the Director's designee or the board of the local soil and water conservation district (board). The plans are intended to manage and abate the degradation of waters by animal waste and other agricultural pollutants. Operating in substantial compliance with an approved plan is an affirmative defense in civil suits involving agricultural pollution.

#### Mandatory plans – agronomic rate for fertilizer/manure

The bill makes two changes. First, it makes developing and operating under an approved operation and management plan mandatory for persons who own or operate (1) 50 or more acres of agricultural land or (2) small and medium concentrated animal feeding operations (CAFO) (see "**Supplemental information**," below).<sup>1</sup> Second, it requires that the plans include an "agronomic rate" standard for applying fertilizer and manure. "Agronomic rate" is the rate at which fertilizer or manure can be added to the soil in a 12-month period for optimum crop growth based on:

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<sup>1</sup> R.C. 939.03(A)(1).



- (1) Nutrient content of the fertilizer or manure;
- (2) Nutrient needs of the current or planned crops;
- (3) Nutrient holding capacity of the soil; and
- (4) Nutrient content in the soil as determined by soil tests.<sup>2</sup>

The bill exempts from these requirements persons who operate under organic systems plans that are approved by a federally accredited entity and conform to federal standards governing organic foods production.<sup>3</sup>

### **Optional plans – agronomic rate standard**

Operation and management plans remain optional for owners or operators of less than 50 acres of agricultural land and AFOs that are not CAFOs. However, under the bill, if they elect to operate under a plan, it must require that fertilizer or manure be applied at an agronomic rate.<sup>4</sup>

### **Mandatory enforcement actions**

The bill makes it mandatory, rather than discretionary under current law, for the Director to:

- (1) Require corrective actions and assess civil penalties in response to certain actions by the owner or operator of agricultural land or an AFO, including not complying with certain standards established in rules or not operating in compliance with an operation and management plan; and
- (2) Mandate in the corrective actions that the owner or operator operate under an approved operation and management plan or composting plan.<sup>5</sup>

In addition to making civil penalties mandatory, the bill eliminates the following two procedural steps that the Director must complete before assessing a civil penalty (1) provide written notice specifying corrective actions and the time in which they must be taken, and (2) after the time expires, inspect the agricultural land or AFO to determine if the deficiencies remain. It retains the requirement that the Director afford

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<sup>2</sup> R.C. 939.03(A)(1) and (D)(1).

<sup>3</sup> R.C. 939.03(A)(1).

<sup>4</sup> R.C. 939.03(A)(2).

<sup>5</sup> R.C. 939.07(A)(1) and (2).

the opportunity for an adjudication hearing under the Administrative Procedure Act before assessing the penalty. As under current law, the owner or operator may waive the hearing.<sup>6</sup>

### **Annual reports – manure applied by animal feeding facilities**

The bill requires the filing of annual reports concerning animal feeding facilities that apply 350 tons or more of dry manure per year. Essentially, an animal feeding facility is "a livestock farm. . . that houses animals in barns or feedlots rather than in pastures or other vegetated areas."<sup>7</sup> The facility's owner, operator, or certified livestock manager must file the report with the Director in accordance with rules adopted by the Director. The report must include the following information for a 12-month period:

(1) The total estimated amount of manure applied on the surface of agricultural fields by the owner, operator, or manager;

(2) The total estimated amount of manure sold or otherwise transferred by the owner, operator, or manager to other persons that apply the manure on the surface of agricultural fields;

(3) The location, by subwatershed, of the total estimated amount of manure applied on the surface of agricultural fields by the owner, operator, or manager or sold or otherwise transferred to other persons that apply the manure on such fields.<sup>8</sup>

The Director's rules must establish requirements and procedures governing the reports. The rules must include guidelines for owners, operators, and managers to use when determining the information described in (1) and (3).<sup>9</sup>

### **Supplemental information – concentrated animal feeding operations**

A small CAFO is an animal feeding facility that is not a large or medium CAFO and that is designated by the Director of Agriculture as a small CAFO pursuant to rules.<sup>10</sup> If the Director of Environmental Protection determines that an animal feeding

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<sup>6</sup> R.C. 939.07(A)(3).

<sup>7</sup> *Ohio Regulates Concentrated Animal Feeding Facilities*, Ohio State Bar Association, <https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/LawYouCanUse-500.aspx>. See R.C. 930.01(B) for the statutory definition.

<sup>8</sup> R.C. 901.80(A) and (B).

<sup>9</sup> R.C. 901.81.

<sup>10</sup> R.C. 939.03(D)(3) by reference to R.C. 903.01, not in the bill.

facility is a significant contributor of pollutants to waters of the U.S. and it is not a medium CAFO, the Director may designate it as a CAFO.<sup>11</sup>

A medium CAFO is an animal feeding facility that satisfies both of the following:

(1) The facility stables or confines any of the following number of animals:

--200 to 699 mature dairy cattle whether milked or dry;

--300 to 999 veal calves;

--300 to 999 cattle other than mature dairy cattle or veal calves;

--750 to 2,499 swine that each weigh 55 pounds or more;

--3,000 to 9,999 swine that each weigh less than 55 pounds;

--150 to 499 horses;

--3,000 to 9,999 sheep or lambs;

--16,500 to 54,999 turkeys;

--9,000 to 29,999 laying hens or broilers if the facility uses a liquid manure handling system;

--37,500 to 124,999 chickens, other than laying hens, if the facility uses a manure handling system that is not a liquid manure handling system;

--25,000 to 81,999 laying hens if the facility uses a manure handling system that is not a liquid manure handling system;

--10,000 to 29,999 ducks if the facility uses a manure handling system that is not a liquid manure handling system;

--1,500 to 4,999 ducks if the facility uses a liquid manure handling system.

(2) The facility does one of the following:

--Discharges pollutants into waters of the U.S. through a ditch constructed by humans, a flushing system constructed by humans, or another similar device constructed by humans;

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<sup>11</sup> <http://www.epa.ohio.gov/portals/35/cafo/NPDESPartI.pdf>.

--Discharges pollutants directly into waters of the U.S. that originate outside of and that pass over, across, or through the facility or otherwise come into direct contact with the animals at the facility.

If a facility discharges pollutants directly into waters of the U.S., the owner or operator of the facility generally must obtain a national pollutant discharge elimination system permit from the Environmental Protection Agency.

A medium CAFO includes an animal feeding facility that is designated by the Director of Agriculture as a medium CAFO pursuant to rules.<sup>12</sup>

An animal feeding facility means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be confined and fed or maintained there for 45 days or more in any 12-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

An animal feeding facility also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied.<sup>13</sup>

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## HISTORY

ACTION	DATE
Introduced	10-07-15

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<sup>12</sup> R.C. 939.03(D)(3) by reference to R.C. 903.01.

<sup>13</sup> R.C. 903.01(B), not in the bill.

